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# IMPARTIAL THOUGHTS

UPON THE

BENEFICIAL CONSEQUENCES

OF

# IN ROLLING

ALL

Deeds, Wills, and Codicils affecting Lands,

THROUGHOUT ENGLAND AND WALES.

BY

FRANCIS PLOWDEN, Esq.

CONVEYANCER,

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TO THE PUBLIC.

**F**ROM my experience of the mischiefs arising from the imperfection of the present registering Acts for the Counties of York and Middlesex, as well as from the want of an universal Inrolment of Deeds and Wills affecting Land, I feel it my duty to apprise the public of the evil they are suffering, and to suggest a remedy, that will not only eradicate the disorder, but add strength and vigour to the part affected. For the satisfaction, however, of the public and of myself, I first submitted it to the consideration of all the Judges and Law Officers of the country, to which I wish it to be applied; most of whom have done me the honour to express the strongest approbation of the plan, and a wish to see it carried into execution. I do not say this with a view to bias the opinion of any individual, but to prove that I have acquitted myself of every preliminary duty to the public, before I presented to them this publication.

It is now offered to them as the only mean, by which their previous sense of the expedient can be tried and known.

As it is my design to reduce the several acts of parliament upon the subject, to one plain, consistent and efficient statute, I expect that a candid public will approve of my going rather largely into the inconsistencies and mischiefs of such acts, as I have thought necessary to be repealed.

The considerations, motives, and reasons for my digesting and proposing to the public a plan for an universal Inrolment of all Deeds and Wills affecting Land, will, I hope, have their full weight in forming the opinions of individuals upon the expediency of it. These are, to the *Land Owner*, the encrease of the value of his land, by clearing and confirming his title to it, and facilitating the means of settling, charging, or selling it: to the *Monied Man*, the multiplication, certainty, and faith of land securities: to the *Lawyer*, the ease, satisfaction, and surety both of his client and himself in all negotiations respecting lands: to the *Financier*, the general rise of the value of land in the market, which must proportionably raise the price of the funds: and to the *Senator*, the good and quiet of the subject, the consistency and certainty of the law, and the welfare and prosperity of the nation.

FRANCIS PLOWDEN.

*Adelphi Terrace.*

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## IMPARTIAL THOUGHTS, &c.

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### *Introductory Considerations.*

**M**OST persons are in the habit of allowing merit, and even of giving praise to every act, which proceeds from the legislative wisdom of the British parliament. Yet if we reflect coolly and deliberately upon the circumstances, under which acts of parliament are often passed, we shall find, from the motives, reasons, and occasions of bringing in the bill, the persons or party, by whom the business is managed and conducted, and the means, by which it is carried through the houses, that the real good of the country was not the principle, upon which the bill was grounded, and consequently, that the welfare of the country is not the consequence of its having passed into a law. It will be needless to adduce instances of this truth; since every person, who will bestow even a passing thought upon the subject, must call to his recollection many occurrences, to which it most forcibly applies. The personal wish of the Sovereign, the private views of a minister, the interest of a party, the concealed arts of interested individuals, the inconsiderable impetuosity of the proposers, the ignorance of the managers, the inexperience of the draftsmen, and the inattention of the members to what may not personally interest them, are the  
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various causes of acts of parliament being amended, explained and repealed.

It is in fact impossible, that any human intuition can be so perfectly comprehensive, as to foresee and prevent many consequences of a law, which it was the intention and expectation of the legislators to have obviated in passing it. To some speculative minds, this may be a humiliating consideration; but it must convince every one, that upon any attempt to alter the law, it becomes highly adviseable to take every previous step to consult with and inform those persons in particular of the subject, who are competent to judge of, or who may be interested in or affected by the alteration. When this necessary precaution has been attended to, and the plan has been previously approved of, no responsibility can lie with those, under whose immediate sanction the proposal is brought forward and carried into execution.

### *Reasons for this Publication.*

In the course of practice as a conveyancer, I have met with several instances, in which great advantages have been produced from a *regular inrolment* of deeds and wills affecting lands; and in which, very great inconveniences and important losses have been incurred and suffered from the *registry* of deeds and wills in certain counties, according to several acts of parliament now in force. Upon turning the subject repeatedly in my mind, I became decisively convinced of the expediency, and even necessity, of inrolling all deeds and wills affecting lands throughout England and Wales. With a view fairly to commit this expediency and necessity to the judgment of the public, I have ventured to commit my thoughts upon it to the press.

To provoke investigation and enquiry, is a demonstration of the intention to lead to truth.

*Apology.*

To the gentlemen of my profession, I must apologize for deviating in the course of my reasoning from that technical formality and precision, with which legal subjects are usually treated. My wish is to adapt my reasoning to non-professional minds, and make them as much masters of the subject, upon which they are now called upon to judge, as if they had devoted much of their time to the study of the law. I have also for these reasons been so particular and full in my quotations, as generally to save my readers the trouble of resorting to the books, from which I have taken them.

*General Ideas of our Law.*

*Semper eadem* is the respectable and wise device of our jurisprudence, which, as Lord Bacon says (*a*), *ever favours the law of nature*; and that stands upon no other basis. But it is not from the temporary variations and superficial appearances, that we are to judge of this sameness; it is the fundamental principle, to which we are to look up. In the succession of ages, the variation of manners and customs, the diversity of languages, the variety of characters, in the monarchy of Solomon, the republic of Rome, and the government of Great Britain, from Lapland to the Brasils, one *same* principle of nature actuates the whole. So from the code of Alfred, to the present complicated mass of statutes and precedents in law and equity, through all the various forms and changes of our govern-

(*a*) Bacon's argument in the Exchequer Chamber on Calvin's case.

ment, the same principles, upon which the law was founded in its primitive simplicity, will be found to support and uphold it in all its extent of multifarious modifications; as the same source of juices causes the acorn to split, and feeds the luxuriant oak. I do not term that an innovation of the law, which is interwoven with its first principles: it often becomes requisite, that particular laws should be newly modelled and adapted to the exigencies of the present manners, times, and circumstances. Upon this principle was it, that Mr. Locke, (*a*) in the 79th article of his Carolina laws, enacted, "that to avoid a multiplicity of laws, which by degrees always change the right foundations of the original government, all acts of parliament whatsoever shall at the end of one hundred years after their enacting, respectively cease and determine of themselves without any repeal." For as, during the course of a century, many changes will necessarily take place in the customs, manners, and habits of the nation; so should the laws also change with them: but as the former changes cannot be produced, but upon one inviolable principle of nature, so ought not the latter to be varied nor newly modelled, but upon the original principles of the law.

The law of nature is the general ground-work of every municipal law; and the exigencies of civil society have founded some general principles common to all communities: yet, from the locality, temperature, and other peculiarities of certain societies, these principles have branched out into a great diversity of laws. I shall pass over the original rights acquired by occupancy, or claims established in the law of nature; and take up our considerations from the cultivated state of society, when

(*a*) Locke's Works, Vol. III. p. 674.

this island, or at least the southern part of it, was established in a regular and certain order of government.

*Reasons of Policy.*

The geographical situation of this island, has adapted it peculiarly to all the purposes of trade and commerce: and it is essentially important to the welfare and flourishing state of trade and commerce, that the landed property of the country should be established and kept upon such a footing, as to render it serviceable and useful for all mercantile purposes. Thus land, to become useful to commerce, must be marketable and negotiable; and to be so, must be invariably clear and evident in its title.

*Of the ancient Tenures of Land.*

The present modern tenures of lands in England and Wales, have insensibly formed themselves into some reasonable and consistent principle, upon the gradual decline, and at length the total abolition of the feudal system. It is curious to observe, that every affection of the land, even under the present tenures, is only accountable for upon some feudal principle. To answer my intended purpose, we will throw back our ideas to the year 800, at which time, Sir Henry Spelman says, the feudal system was the law of nations in our western world; for although in the time of our Saxon ancestors, the feudal law had footing in this island, as well as in other parts of Europe, yet it was not attended with all the rigor and forms, which were afterwards imported and introduced into it by the Normans. The oppressive multiplicity of tenures and other feudal consequences, which were never completely abolished till the days of King Charles the Second, were abusive emanations of an original principle

of simplicity and liberty, to which if we recur, and upon it revive, or even introduce an usage congenial with the present times, manners, and circumstances, a shadow of imputation cannot lie against us of attempting to alter the law or infringe the constitution.

*The free Power of aliening Land in a commercial Country.*

The experience of many centuries has most incontrovertibly proved, that the free power of aliening land, with certain modifications and restrictions, is essentially requisite in a commercial country; and in this power of alienation, is most closely interwoven the necessary notoriety of the landowner's title. Lord Mansfield, in a learned and elaborate argument upon the nature of a disseisin, in *Taylor v. Horde* (a), says, that “ the different statutes, which had given free liberty of alienation, and abolished all military tenures, had left us little but the names of feoffment, seisin, tenure, and freeholder, without any precise knowledge of the thing originally signified by these sounds. Copyholds, and the customary freeholds in the North, retain faint traces, in imitation of the old system of feudal tenures. It is obvious, how a man may visibly be the copyholder or customary freeholder *de facto*, in prejudice of the rightful tenant; and it then was as notorious, who was the feudal tenant *de facto*, as who now is *de facto* incumbent of a living or mayor of a corporation.”

(a) 1 Burr. p. 108.



*Notoriety of the first Acts of Alienation of Land.*

When this free power of alienation had once gained footing, the most solemn notoriety attended every act of alienation : the first mode of transferring landed property was, in the unlettered days of our warlike ancestors, by the corporal tradition and investiture in possession of the aliened lands ; and this was done with the utmost solemnity, *coram paribus de vicineto* ; or it was rendered public and notorious by some other symbolical gift or tradition : (a) “ At first many lands and estates were collated or “ bestowed by bare word of mouth, without writing “ or charter, only with the lord’s sword or helmet, or “ a horn or a cup ; and very many times with a spur, “ with a currycomb, with a bow, and some with an “ arrow : but these things were in the beginning of “ the Norman reign : in after times this fashion was “ altered.” But as in process of time, great inconveniences were experienced from the evidence of titles resting solely upon the personal memory of the witnesses to such acts of alienation, written conveyances were introduced ; the first form of which was the deed of feoffment : and although the words of the deed, which in fact was a transaction only between the grantor and grantee, contained the nature of the transfer, and the duration of the estate intended to be thereby given ; yet the feoffment, or rather the transfer or alienation, was not perfected till the *livery of seisin*, which was made *coram paribus de vicineto*, who indorsed upon the back of the deed of feoffment their attestation as to the manner, place, and time of such livery. *Nam feudum sine investiturâ nullo modo constitui potest* (b) ;

(a) Selden’s *Janus Anglorum*, c. 3. p. 54.

(b) Wright 37.

nor was the transfer or alienation complete, till, as Fleta (a) says, *fit juris et seisinæ conjunctio*.

So says Mr. Justice Blackstone: (b) “ Livery of seisin, by the common law, is necessary to be made upon every grant of an estate of freehold in hereditaments corporeal, whether of inheritance or for life only: and in leases for years, an actual entry is necessary to vest the estate in the lessee; for the bare lease gives him only a right to enter, which is called his interest in the term, or *interesse termini*; and when he enters in pursuance of that right, he is then, and not before, in possession of his term, and complete tenant for years. This entry by the tenant himself served the purpose of notoriety, as well as livery of seisin from the grantor could have done. Thus is it observable, how upon the old principles the modern rules of law are grounded; for, even to this day, you cannot grant a freehold to commence *in futuro*: the reason is, that at common law such a grant could not be made without livery of seisin; and this livery being an actual tradition of the land, must take effect *in presenti*, or not at all.”

It is obvious, that there can be no livery of seisin of incorporeal hereditaments, or of such things as, by lawyers, are said to lie in grant; as advowsons, commons, rents, seignories, reversions, &c.: *Res incorporales, quæ sunt ipsum jus rei, vel corpori inhærens traditionem non patiuntur*. (c) Therefore, as Mr. Justice Blackstone further observes, “ These things passed merely by the delivery of the deed; but then such grant, together with the attornment of the tenant, were held to be of

(a) Fleta 2. l. 3. c. 15. § 5.

(b) Blackst. Com. vol. 2. p. 314.

(c) Bracton, l. 2. c. 18.



“ equal notoriety with, and therefore equivalent to  
 “ a feoffment and livery of lands in immediate  
 “ possession (a).”

As early then, as landed property could be transferred or aliened by deed, we trace this first essential principle; that the utmost notoriety always attended the act of alienation. And although in process of time, either by the arts or inattention of conveyancers, modes have been devised and established of passing lands in a very secret manner, yet it certainly never could have been the intention nor spirit of that law, which, as we have seen, required such determined notoriety in every act of alienation of land. This want of notoriety has frequently been a subject of discussion, both to lawyers and statesmen: and it is therefore no less astonishing than true, that the subject has never been thoroughly investigated, and consequently neither faithfully represented nor properly understood. The further enquiry into it at present shall be introduced in Mr. Justice Blackstone's words (b).

“ In the ancient feudal method of conveyance,  
 “ (by giving corporeal seisin of the lands) this notoriety was in some measure answered; but all  
 “ the advantages resulting from thence are now  
 “ totally defeated by the introduction of death-bed  
 “ devises and secret conveyances; and there has  
 “ never yet been any sufficient guard against fraudulent charges and incumbrances: since the disuse of the old Saxon custom of transacting all  
 “ conveyances at the county court, and entering a  
 “ memorial of them in the chartulary or leger  
 “ book of some adjacent monastery, and the failure  
 “ of the general register established by King

(a) Blackst. 2 v. c. 20. p. 317.

(b) Blackst. 2 vol. c. 20. p. 343.

“ Richard the first, for the starrs (a) or mortgages  
 “ made to Jews, in the *Capitulâ de Judeis*, (b) of  
 “ which Hoveden has preserved a copy. How far  
 “ the establishment of a like general register for  
 “ deeds and wills, and other acts affecting real  
 “ property, would remedy this inconvenience, de-  
 “ serves well to be considered. In Scotland, every  
 “ act regarding the transmission of property is re-  
 “ gularly entered on record; and some of our own  
 “ provincial divisions, particularly the extended  
 “ county of York and the populous county of  
 “ Middlesex, have prevailed with the legislature to  
 “ erect such registers in their respective districts.”

In Ireland also, all deeds affecting lands are registered, by which notoriety of the incumbrances, many important objections against lending money upon mortgage in that kingdom, are done away. From very frequent enquiries into the nature and consequences of inrolling deeds in Scotland, and

(a) The Hebrew word *stetar* signifies a deed or contract: if therefore the first syllable be abbreviated, or rather if the whole word be contracted into one syllable, we shall have the sound, by which a modern Northern Jew would pronounce the word *star*. Hence it is more probable, that the *Star Chamber* was so called, than from its starry cieling.

(b) It would be ill judged indeed to draw a line of parity between the reasons for inrolling deeds and wills in the present age, and those, which induced government in the 11th century to pass these laws relating to the Jews: when we reflect, that they were passed in an age, when either the Jews would, or Christians could otherwise believe, that they would yearly, on Good Friday, crucify a child of Christian parents, in derision of the crucifixion of our blessed Redeemer. (Molloy, l. 3.) However, upon the general principle of avoiding cavilling and differences between adverse parties, “ every Jew was made to  
 “ swear upon his roll, that all his debts, and pawns and rents,  
 “ and all his goods and possessions he should cause to be in-  
 “ rolled, and that he should conceal nothing,” &c. &c. It is a vulgar axiom, “ believe every man honest, but deal with him, as if he were otherwise:” many hold this good as to individuals, but all must think it holds good as to legislative bodies.

registering

registering them in Ireland, I have not found, that in any one instance, any reasonable complaint had ever been made either against the usage or the effects : on the contrary, I have observed much good thereby produced and felt (a).

In support of these ideas, it is very satisfactory to find, they are not new : in the preface to Baron Gilbert's learned Treatise of Tenures, it is said, " He has clearly explained the reason of those public ceremonies and acts of notoriety, required by the feudal law, for the acquiring, possessing, and transferring of feuds, and which formerly were equally requisite in our common law tenures, viz. liveries, attornments, &c. ; the disuse whereof has not only occasioned an uncertainty in many titles and estates, but also introduced that mischievous practice of private and secret feoffments, by lease and release, covenants to uses, &c. and which, in consequence, has introduced a deluge of perjuries, forgeries, and other corruptions over the common law, and which can never be rectified, or the mischief redressed, till the common law be, in that particular, restored to the ancient method of passing estates *in pais*, or by some public act of notoriety."

*Popular Prejudices not to be disregarded.*

I do not think, that popular prejudices are always justly grounded, and reasonably entertained ; but they seldom subsist without some reason, that is *ad caput vulgi*, and within the ready apprehen-

(a) There has always appeared to me much more order reason and judgment, in all legal transactions in Scotland, than in Ireland : nor, in my opinion, can there be a more marked instance of that superiority, than in the enrolment, instead of the registry of deeds. I shall speak more fully hereafter of the very essential defects and mischiefs of the mutilated memorials of registered deeds in this kingdom.

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sion of the community. Thus it is well known, that in the purchase of landed estates, and much more in the negotiations for the loan of money upon mortgage, or by way of annuity or rent charge, a decided preference is generally given to securities in the registering counties over those, in which no registry is established: and for what reason? but because generally there is more confidence between the buyer and seller, and the lender and borrower, when the lands lie in a registering county, than when they lie in other places; and the lands are there found to be more marketable and negociable. And what can so effectually raise the price and value of them, as this desirable quality? What can so materially promote the trade of a country, as the ease and security, with which the merchant may invest his gains in the purchase of real property or land? What can so essentially raise the value of land to the owner, as the facility, with which he can render it subservient to every purpose of providing for his family, relieving his distresses, or even gratifying his pleasures and inclinations? These again are no new ideas: A small pamphlet published in the year 1696, intituled, *A Proposal for the erecting County Registers for Freehold Lands, shewing the great Use and Benefit of them*, has these words, “ It is the cheapness and facility of procuring money, that is the benefit designed to the borrower, as certainty and security is to the lender. If we gain these two points, the principal benefit of land is gained, which is to make them funds for carrying on the trade of the nation, to the public and private benefit.” The vulgar prejudice then in favour of the registering counties, is grounded upon these plausible reasons; that thereby the value of the land is increased to the owner, by its becoming more negociable and marketable; and titles and securities become thereby

by more clear and unobjectionable to the monied men for investing their money in purchases or mortgages. Plausible as these reasons are, we are now to examine how far they are just and actually exist.

In the sequel of my researches, I am happy in moving upon a principle, which evidently is founded in the ancient laws of this country; and that much experience may be called in to the aid of my argument, not only from our sister kingdoms, but also, in a very great measure, from our own. We have seen, that the first method of conveying land by a written deed, was done with the greatest publicity and notoriety; and therefore, after such a conveyance, there was not supposed to remain any secret title or suppressed right in any other. The person, to whom such conveyance was thus publicly and notoriously made, was supposed to acquire thereby such a right, as he could maintain against all men (*a*). “By the ancient feudal law, no man could alien without a licence from the lord of the fee, and this licence was part of the notoriety on such alienations. And if they alienated without such licence, the feud was forfeited. Nor could the lords part with their manors and services without the attornment of their tenants, &c.” But we are now gone by the time, when, as Lord Bacon says (*b*), “all inheritances could not pass, but by acts overt and notorious, as by deeds *livery and records*.” And it must be the conviction of every person, who turns a thought to the subject, that as the occasions of charging and selling lands are become now more frequent, than they have heretofore been, it is become now therefore more requisite than ever, I

(*a*) Gilb. Tenures of continual Claim, p. 46.

(*b*) Bac. reading on the Statute of Uses, p. 329.



do not say to alter or new model the forms of conveyances and alienations of lands, but rather to restore them to their ancient mode and principle.

*Proofs of the ancient Notoriety in the Alienation of Lands.*

There is no higher authority than the statutes of the realm, both as to the law, which they enact; as to the usages and practices, which they recite. I shall therefore upon this principle, quote the first words of the preamble of the famous statute of uses, passed in the 27th year of the reign of King Henry VIII. (A. D. 1535), of which Lord Bacon says (*a*), it is a law “whereupon the inheritances  
“of this realm are tossed at this day like a ship  
“upon the sea (*b*).” “Where, by the common law  
“of this realm, lands, tenements and hereditaments  
“be not devisable by testament, nor ought to be  
“transferred from one to another, but by solemn  
“livery and seisin, matter of record, writing sufficient made *bonâ fide*, without covin or fraud;  
“yet nevertheless divers and fundry imaginations,  
“subtle inventions and practices have been used,  
“whereby the hereditaments of this realm have  
“been conveyed from one to another by fraudulent feoffments, fines, recoveries, and other assurances craftily made to secret uses, intents and trusts; and also by wills and testaments some time made by nude parolx and words, some time by signs and tokens, and some time by writing,” &c. &c. Then reciting several mischiefs produced thereby, “*to the utter subversion of the ancient common laws of this realm,*” the pre-

(*a*) Bacon’s reading upon this statute, p. 12.

(*b*) 27th H. VIII. c. 10.

amble concludes, “ For the extirping and extinguishment of all such subtle practised feoffments, fines, recoveries, abuses, and errors heretofore used and accustomed in this realm, to the subversion of the good and ancient laws of the same; and to the intent, that the King’s Highness, or any other his subjects of this realm, shall not, in anywise hereafter, by any means or inventions, be deceived, damaged, or hurt, by reason of such trusts, uses or confidences,” &c. And it then enacts, with very great propriety, that *the use of the land shall be ever coupled with the possession*; thus endeavouring to restore the purity and simplicity of the common law of alienation or transfer of land.

### *Of Uses.*

In order to evade the statute of mortmain, and afterwards to cloak and preserve property from confiscations, in the contentions between the houses of York and Lancaster, the doctrine of Uses was introduced, countenanced and established; and upon the subtilty of vesting the use of the land in one person, and retaining the possession of it in another, the plain honourable civil purposes of the common and statute laws of this realm were defeated; and a labyrinth of abstruse doctrine was established and monopolized by the then professors of the law, whose ungenerous principle was to keep their clients in all possible ignorance, that they might reap an unfair advantage from the mischievous subtleties, they had artfully introduced.

After this statute had passed, the parliament in the same session found it adviseable to enact, that the only method, by which it was then known, that a freehold could be transferred indiscriminately from man to man, (and which had arisen out of the

the

the doctrine of uses) which was by bargain and sale for a pecuniary consideration, should retain some notoriety or publication, equivalent at least to that of a feoffment with livery and seisin. So Lord Bacon (*a*): “ But the parliament, that made  
 “ that statute, did foresee, that it would be mis-  
 “ chievous, that men’s lands should so suddenly,  
 “ upon the payment of a little money, be con-  
 “ veyed from them, peradventure in an alehouse  
 “ or in a tavern, upon strainable advantages; did  
 “ therefore gravely provide another act in the same  
 “ parliament, that the land, upon payment of this  
 “ money, should not pass away, except there were  
 “ a writing indented made between the said two  
 “ parties, and the said writing also within six  
 “ months inrolled in some of the courts of West-  
 “ minster, or in the sessions rolls in the shire,  
 “ where the land lieth, unless it be in the cities  
 “ or corporate towns, where they did use to  
 “ inroll deeds; and there the statute extendeth  
 “ not” (*b*).

*Reasons of some Deeds not being inrolled.*

Another mode of conveyance sprung out of this wily doctrine of uses, which, because the consideration of such deed necessarily was marriage or consanguinity, it was not perhaps thought by the legislature open to such fraud nor deceit; and as it did not pass the land out of the owner’s family, it might not require the same degree of notoriety and

(*a*) Use of the Law, p. 150.

(*b*) The particular customs of inrolling deeds in some towns and corporations, may fairly be presumed to have been adopted and established, upon the idea of a more frequent circulation of property in the place where the custom prevailed; or that it was a relief of an universal usage throughout the nation, retained in particular places: both which reasons strongly enforce the necessity of an universal inrolment.



publication; and therefore such a deed, which is called a *covenant to stand seised to uses*, needs not to be inrolled. Lord Bacon (a) speaks of it, as follows. “ A man that hath a wife and children, being  
 “ king’sfolks, may by writing under his hand  
 “ and seal agree, that for their or any of their  
 “ preferment he will stand seised of his lands to  
 “ their uses, either in tail or fee, so as he shall see  
 “ cause : upon which agreement in writing, there  
 “ ariseth an equity or honesty, that the lands should  
 “ go according to those agreements; nature and  
 “ reason allowing these provisions, of which equity  
 “ and honesty is the use, and the use being created  
 “ in this sort, the statute of 27 H. VIII.  
 “ before mentioned conveyeth the estate of the  
 “ land (b), as the use is appointed. And so this  
 “ covenant to stand seised to uses is at this day,  
 “ since the said statute, a conveyance of land; and  
 “ with this difference from a bargain and sale, in that  
 “ this needeth no inrolment, as a bargain and sale  
 “ doth, nor needeth not to be in writing indented,  
 “ as a bargain and sale must : and if the party,  
 “ to whose use he agreeth to stand seised of the  
 “ land, be not wife or child, cousin, or one, that he  
 “ meaneth to marry, then will no use rise, and so  
 “ no conveyance.”

Without departing from the time, of which Lord Bacon speaks, all other assurances of land then in usage were, as the same still are, made by matter of record; and consequently with that species of notoriety, which I am endeavouring to shew, ought to attend every deed and will affecting land.

Mr. Justice Blackstone says (c), “ Assurances

(a) Bac. ubi supra, p. 151.

(b) *i. e.* by coupling the use with the possession, or transferring the use into possession.

(c) Black. Com. Vol. II. l. 2. c. 21.

“ by matter of record call in the sanction of a  
 “ court of record to substantiate, preserve, and be  
 “ a perpetual testimony of the transferring of pro-  
 “ perty from one man to another, or of its establish-  
 “ ment when already transferred. Of this nature  
 “ are, 1°, Private acts of parliament; 2°, The  
 “ king’s grants; 3°, Fines; 4°, Common reco-  
 “ veries.” It would exceed the intention of my  
 design, to explain the nature of these four modes of  
 affecting landed property: suffice it to say, what  
 every one knows, that they are methods, by which  
 a title to land may be acquired, or by which the  
 land may be affected; and that not one of them  
 can be practised without the most solemn and pub-  
 lic notoriety.

### *Deductions.*

If it be expedient to render public and notorious  
 the act, by which the most sure and solid title to  
 land is acquired; it must be for some reasons,  
 which enforce that expediency: whatever reasons  
 these are, they must essentially counteract the pro-  
 priety or expediency of any title to land being  
 acquired without such notoriety; for *a majore ad  
 minus valet consequentia*. If the king in person,  
 who is not presumed to err; if his judges in court,  
 whose judgment is mandatory; if the legislative  
 body, whose authority is uncontrollable, cannot  
 transfer land, or give title unto it without the so-  
 lemnity of publicity, notoriety, and perpetuity, *a  
 fortiori*, individuals, whose judgment is always  
 fallible, whose integrity is often suspicious, whose  
 artifices are sometimes refined and almost impe-  
 netrable, ought not to be permitted to transfer  
 land or give title unto it, without at least equal  
 publicity, notoriety, and perpetuity.

When the legislature in the 27th year of King  
 Henry

Henry VIII. enacted, that *every bargain and sale of lands should be by deed indented and inrolled*, there was no other method or form known or practised of selling or transferring land, (except by deed of feoffment with livery and seisin). And indeed this deed of bargain and sale itself was a novelty introduced into the law, together with or springing out of the doctrine of uses. And I may here properly again say with Judge Blackstone (a), "It is impracticable, upon our present plan, to pursue the doctrine of uses through all the refinements and niceties, which the ingenuity of the times, (abounding in subtle disquisitions) deduced from this child of the imagination, when once a departure was permitted from the plain simple rules of property established by the ancient law."

As these subtle inventions and innovations had for centuries been weaving themselves into the texture of the law, and thus had become, as it were, of a piece with the law itself, it was difficult for parliament to devise at once a remedy perfectly commensurate with the mischief, without perhaps venturing upon the too hazardous experiment, of abolishing the whole system, with all its mediate and immediate consequences.

### *Lands deviseable.*

From the change of laws introduced by the Normans, to the days of Henry VIII. lands were not deviseable, which was found by experience to be inconvenient; though by special custom, as in London and elsewhere, lands might be given by wills; and this was a relic of the Saxon liberties or laws, by which lands were deviseable. Upon this doctrine of uses then, a person wishing his land

(a) Black. Com. Vol. II. c. 20. p. 33.

after his death to go in a different succession from the descent, which the law would have cast it in, conveyed during his life his land to a friend in trust; and then by his will would declare how his friend should dispose of it. This declaration by will raised *an use*, which gave the benefits and profits of the land to the person intended to be benefited by the will, whilst the land itself was legally and really vested in the person, to whom it had been conveyed, and to whom livery and seisin had been made; and he was called the feoffee in trust. But the statute of uses, which transferred the use into possession, necessarily defeated this shifting evasion of the law; for after this statute, the raising of *an use* in land was giving the real possession of the land; and this would have been to all intents and purposes a devise of lands, which ever since the introduction, or rather the new modelling of the feudal system by the Normans, had not been allowed. It was however soon found expedient to alter the law in this regard; and by the 32d of Henry VIII. persons were enabled to give and devise lands by will, under certain restrictions.

Here parliament, as in many other instances, changing the ancient law or remedying an evil, was inattentive to one of the most material consequences of such innovation; which was, to provide for the solemnity and notoriety of that act, by which land is given to a stranger, and the right heir, whom the law ever favors and protects, is disinherited and deprived or defeated of his legal rights, in a manner certainly more liable to deceit, fraud, art and undue influence, than any act or deed, which operates and takes its full effect, during the lifetime of the grantor or donor. But of this want of notoriety in wills of land, I shall speak more fully hereafter.

*Introduction of secret Conveyances.*

In process of time, still upon this doctrine of uses, the ingenuity of conveyancers, and particularly of Sir Orlando Bridgman, before whom more than two thirds of the titles in the kingdom, after the civil wars, had been laid or submitted, introduced a new mode of conveyance, to which (for reasons never publicly given, for they would not stand the test of public investigation and judgment) they gave the full effects of feoffment with livery and seisin, or bargain and sale inrolled; but without the notoriety either of the one or of the other. This was a conveyance by *lease and release*, which is now become the most common conveyance of lands. For in the doctrine of uses, a very strange and unaccountable rule of law had prevailed and been established, viz. that *no use could be limited on an use*; (a) by which it was understood, that, if A. for money bargained and sold his land to B. it raised an use in the land to B. which use being transferred into possession by the statute of uses, no further limitation could be engrafted upon it. Now it often happens, that there is occasion to limit lands to A. and his heirs, to the use of several different persons in remainder, and for different estates; to some for life, to others in tail, either male or female; and to another in fee, as is usually the case in marriage-settlements. For example, the owner of the land generally conveys it by lease and release to two trustees, (who are called the releasees to uses and trustees of the inheritance to preserve the contingent remainders, &c.) to the use of himself for life, then to the use of the trustees to preserve the contingent remainders from being defeated, but to hold it in trust for the tenant for

(a) Dyer 155.



life; then to the use and intent of providing a jointure for the intended wife, or to her for life in like manner as to himself; then to the use of other trustees for a term of years, for the purposes of better securing the jointure and providing portions and maintenances for the younger children; then to the issue of the marriage in tail, with perhaps several voluntary remainders to relations or friends; and the ultimate remainder to the settler in fee-simple.

All these different limitations could not be made by a bargain and sale inrolled, *because an use cannot be limited upon an use*. So from this doctrine of uses, various innovations have at different times been introduced into the practice of conveyancing: but as the principles, upon which these innovations were grounded, were heterogeneous from those of the ancient law; so no wonder, that the introductors of them lost sight of the leading features of the old law, which were notoriety and perpetuity, as we have seen in feoffments with livery and seisin, and bargains and sales inrolled. It would exceed the extent of my plan, and be irrelevant to the subject under consideration, to enter more fully into the nature, operation, and effects of a conveyance by lease and release: suffice it to have said, that by the general law of this country, they need not now be inrolled, no more than wills or any other private conveyances of land, (except bargains and sales for a pecuniary consideration.)

*Further Proofs of the ancient Notoriety of all Deeds affecting Lands.*

Copyhold estates are nothing more nor less, than certain customs or usages, which, though formerly general and common to other lands, have by particular

ticular privilege, grant, or even chance, been retained and preserved in different manors, after the general tenure of lands throughout the kingdom was altered and changed. Although many of these customs vary in different manors, yet there is one principal usage, which is, I believe, universally and unexceptionably common to every manor, in which any copyhold customs or usages are preserved. And this is, that no copyholder (or tenant holding by copy of court roll) shall or may pass away, change, alter, or affect his land, without making this deed or act in some shape notorious in the manor court. Nothing so strongly proves an ancient usage, as the preservation of it in particular subordinate jurisdictions: and there is no method so sure of proving the existence of a law or usage, as to shew that parliament has taken its benefits or abuses into consideration. So early then as in the year 1384 (a) “ at the complaint of the said commonalty made “ to the lord the king in the parliament, for that “ great disherison” (*exheredatio*, or loss of the right heir’s title) “ in times past was done (or happened) to the people, and may be done, by the false “ *entering of pleas, raising of rolls, and changing of “ verdicts, &c.* it is accorded and assented, that if “ any judge or clerk be of such default, so that “ by the same default there ensueth disinheriton of “ any of the parties, &c. &c. he shall be punished by fine and ransom at the king’s will “ and satisfy the party.” Can any thing more conclusively evince, that in those days the deeds and muniments to men’s estates were inrolled and recorded, that is, rendered public, notorious, and perpetual? I now hope I have said enough to prove, that the requisition of notoriety and perpetuity to every act, by which land is affected, is

(a) 8 Ric. 2. c. 4.

congenial with the principles of the ancient law, and therefore that it ought to be universally established throughout the kingdom.

*It is more necessary in the present, than in any past Age, to render every Act, by which Land is affected, public, notorious, and perpetual.*

In the reign of Queen Elizabeth, a motion was made in the house of commons for leave to bring in a bill to prohibit usury; by which nothing more in those days was meant, than placing out money at interest: for it is since the regulating of the rate of interest, that the word *usury* has been appropriated to every illegal excess of that rate. A great statesman then in the house opposed it, and concluded his argument for the continuance of it, with this memorable aphorism: *Let any man shew me a country without usury, and I will shew him one without trade or riches*: than the truth of which, nothing is more clear nor certain. As then the facility of borrowing money upon reasonable interest, is essential to the trade and commerce of a country; so it follows, that the more certain and satisfactory the security is, upon which the money borrowed is placed out, the more conducive is it to the lending and borrowing: and by how much more useful and subservient to these ends the land is rendered, by so much will its value and price be raised; and there needs no argument to prove, that by the value and price of land, the national funds must rise and fall; and their fluctuation is the true and just barometer of the credit and prosperity of the nation. It necessarily follows, that whatever raises the value and price of land, must also increase the price of stock, and consequently tend to promote the credit and prosperity of the kingdom. Upon the same principle



ciple will it appear, that in proportion to the difficulties of raising money, must the circulation of property be checked; and the free circulation of property is evidently essential to the flourishing state of a commercial country. A title to land becomes more complicated, abstruse, and difficult, in proportion to the number, variety, and intricacy of deeds, through which it is deduced. If that notoriety, which was required by the ancient law, had attended every transfer of landed property, much intricacy and uncertainty in titles would have been avoided: but we must argue, as well as judge from facts. The free power of alienation, the flourishing state of trade, the increase of wealth in circulation, the accumulation of statutes, judgments, and decrees respecting the rights and titles of land-owners, the ignorance of many, who undertake to practise as conveyancers, the refinement of some, and the diffuse prolixity of almost all practitioners, must ever tend to increase the intricacy and uncertainty of the land-owner's title to his estates. Now upon the admission of the principle, that the circulation of property must ever be in proportion to the extent of trade, we must infer, that as the trade of this country never was so extensive, as in the present hour, and consequently luxury and refinement (from which it will be difficult to abstract extravagance and dissipation) never were so prevalent in this country, as at present, so therefore never were there so many occasions and calls for money by the distressed, or for securities by the affluent. What then follows? At no period was it so necessary and expedient, for the good of commerce and prosperity of the nation, that the loan of money upon land should meet with few obstructions and difficulties.

If these incidental reasons did not subsist, yet  
there

there are demonstrative arguments in favour of my opinion; for it is uncontrovertable, that all future purchasers and mortgagees must essentially find their titles, if not more difficult, at least more prolix, and consequently open to more perplexity, doubt and defect, than the persons, under or through whom they claim: for, to whatever before existed, they superadd the chances of a new negotiation being affected by some omission, flaw, inefficacy or fraud. How necessary then it is, that a counterpoise should be thrown into the scale against an evil so pernicious in its effects! And what can answer that purpose so effectually, as securing notoriety and perpetuity to the titles of every description of land, so that purchasers and incumbrancers may read their own titles upon the face of the records?

I shall assuredly meet credit when I say, or rather repeat, that every reason for establishing an universal inrolment acquires accumulated strength by process of time; and it is now a full century, since Sir Matthew Hale wrote a *treatise, shewing how useful, safe, reasonable, and beneficial the inrolling and registering of all conveyances of lands may be to the inhabitants of this kingdom*; in which he sets out with enumerating the mischiefs propounded to be remedied, which are: “ 1st. The  
 “ great deceit committed by persons of secret judg-  
 “ ments, mortgages, conveyances and settlements,  
 “ whereby purchasers are oftentimes deceived and  
 “ creditors defeated: and this the more consider-  
 “ able in England, because indeed the great inland  
 “ trade we have, is the trade of buying and sell-  
 “ ing of lands; and the great security, that is  
 “ ordinarily given to creditors and lenders of mo-  
 “ ney, is by security of land. 2. The multitude  
 “ of chargeable and difficult suits in law occa-  
 “ sioned

tioned by preconveyances, which probably would  
 “ be avoided and lessened, if all men’s estates lay  
 “ open to the view of others.”

It must be remarked, that Sir Matthew Hale wrote this treatise many years before any of the registries were established in any of the three ridings of the county of York or in the county of Middlesex; that he talks indiscriminately of inrolment and registry, which are in fact very materially different; that he had not felt the experience of either: nor had he the happiness to see the trade of his country flourish in any degree, comparative with its present state.

### *Parliamentary Redress of Grievances.*

It is no less true than wonderful, that when an abuse or mischief is felt, the party aggrieved, having no legal nor equitable remedy, or perhaps being unwilling to hazard the expence of an action or suit, uncertain and doubtful in its issue, applies to some person in parliament for redress of the grievance. The matter originated in a particular case, and a bill is brought in to obviate or prevent the mischief; the origin, progress, and effect of which, were never submitted to the consideration of those, who were competent to see and correct and prevent the mischief: but parliament, generally inclined to check evil and promote good, gives credit to those, who undertake to bring in the bill, which tends to these general ends, not only for their laudable intentions, but also for their having fully considered and devised the proper and effectual means of attaining the ends proposed by the bill. Thus when, in the year 1692 (a), an act passed to prevent frauds by clandestine mortgages,

(a) 4 & 5 William and Mary, c. 16.

it was a thing, to which no opposition could be given : and it is well known, how few members of either house are, or I presume then were, competent to judge of the subject ; and the few professional members in the house might not take any active part in the bill, unless professionally or officially engaged in the passing of it.

Let us consider first the preamble of this act :  
 “ Whereas great frauds and deceits are too often  
 “ practised by necessitous and evil-disposed persons,  
 “ in borrowing of money, and giving judgments,  
 “ statutes, and recognizances privately, for secur-  
 “ ing the repayment of the said money ; and the  
 “ same persons do afterwards borrow money upon  
 “ security of their lands of other persons, and do  
 “ not acquaint the latter lender thereof with the  
 “ same, whereby such late lender is very often in  
 “ danger to lose his whole money, or forced to pay  
 “ off the debts secured by the said judgments,  
 “ statutes, and recognizances, before they can  
 “ have any benefit of the said mortgages : And  
 “ whereas divers persons do many times mort-  
 “ gage their lands more than once, without giving  
 “ notice of their first mortgage, whereby lenders  
 “ of money upon second or after-mortgages do  
 “ often lose their money, and are put to great  
 “ charges in suits and otherwise,” &c.

The first question I ask upon this, is, What is meant by giving *judgments, statutes, and recognizances privately* ? No judgment acknowledged for debt hath effect, or is in fact a judgment, till entered up in public court, and thereby made public and notorious to all mankind. Statutes are either *merchant* or of *the staple* (a) : a *statute merchant* is a bond of *record*, acknowledged before the clerk of the statutes merchant and the lord-mayor of the

(a) Terms de Ley 548.

city of London, or two merchants assigned for that purpose, and before the mayors of other cities and towns, or the bailiffs of any boroughs, and sealed with the seal of the debtor and the king, upon condition, that if the obligor pays not the debt at the day, execution may be awarded against his body, lands, and goods, and the obligee shall hold the lands to him and his heirs till the debt be levied. (a) *Statutes staple* are concerning merchants and merchandizes of the staple, and of the same nature with *statutes merchant*: they are for debt acknowledged before the mayor of the staple, at our chief cities, &c. in the presence of one or more of the constables of the staple, by virtue of which, the creditor may forthwith have execution of the body, lands, and goods of the debtor on nonpayment. A *recognizance* is also a bond or obligation of record acknowledged to the king; and when for debt, is usually taken and acknowledged before a judge or a magistrate. Every one of these securities for money is essentially of public notoriety, and therefore cannot by possibility *be given privately*.

It certainly must appear strange, that there should exist a necessity of disclosing to a lender of money, what is a record of the court, and is open to the inspection and knowledge of all the world. For what other reason can statutes or judgments be entered of record in the court, unless for the prevention of secrecy and privacy? It is also singular, that when this preamble mentions *prior mortgages and other incumbrances*, which may well exist without the knowledge of any man, and remain for any length of time concealed and suppressed in impregnable secrecy, it seems to have lost sight of the very possibility of their being kept secret or private.

(a) 4 Instit. 238.



Upon considering attentively the purport and tendency of this preamble, will not every man conclude, that the act will ensure some preventive against the fraud, by rendering the privacy and secrecy of such clandestine transactions impossible, or provide some effectual remedy to the lender, in case his security be rendered null and void or ineffectual by some such prior incumbrance? I do not find, in the Journals, upon whose motion the bill was brought in: I see, however, that Mr. Serjeant Trenchard was one of the committee, to whom it was referred, and that Mr. Waller reported several amendments made in the bill by the committee: however, such as it then passed, such is the act at present, of which we are now to judge. It enacts, that any debtor upon judgment, statute or recognizance, taking up money upon mortgage, without having given notice of this debt upon the judgment, statute or recognizance to the mortgagee, shall lose his equity of redemption, and the mortgagee may from the execution of his mortgage deed (where no notice of this public debt upon record hath been given in writing), hold and enjoy the mortgaged lands for the estate and term granted by the mortgage deed against the mortgagor, and all claiming under him, as fully to all intents and purposes whatsoever, as if the same had been purchased absolutely, and without any power or liberty of redemption. And any person mortgaging the same land more than once, without giving notice of the first or prior mortgage, is in like manner deprived of all relief or equity of redemption against the second or other mortgagee; and such second or after mortgagee shall hold in like manner against the mortgagor, and all claiming under him.

It is also enacted, that “ if it so happen that  
“ there

“ there be more than one mortgage at the same  
 “ time made by any person or persons to any per-  
 “ son or persons of the same lands and tenements,  
 “ the several late or under mortgagees, his, her or  
 “ their heirs, executors, administrators or assigns,  
 “ shall have power to redeem any former mortgage  
 “ or mortgages, upon payment of the principal  
 “ debt, interest, and costs of suit to the prior  
 “ mortgagee or mortgagees, his, her or their  
 “ heirs, executors, administrators or assigns, any  
 “ thing herein contained to the contrary in anywise  
 “ notwithstanding.”

As it is with a view to procure the repeal of this  
 act, that I take it under my present consideration,  
 the freedom with which I must necessarily argue  
 upon it, will not, I trust, displease nor offend. The  
 remedy provided by this act for the evils set forth  
 in the recital, is either frivolous and ineffectual, or  
 it is unreasonable and unjust; for either the prior  
 incumbrance or debt, whether it be of record or by  
 mortgage, is so large, as if paid off will leave lit-  
 tle or no residue to the secondary mortgagee; or so  
 small, as if discharged the secondary mortgagee  
 will retain a full and ample security for the money  
 he has advanced. In the first case, to what end  
 shall a mortgagor be hindered from redeeming  
 lands which, if sold, would not pay half the mo-  
 ney advanced upon them? For redemption in this  
 case would be purchasing lands at double price,  
 and a folly, of which a man so distressed or iniqui-  
 tous, as to borrow money upon an insufficient se-  
 curity, would never be suspected; and then the re-  
 medy is frivolous and ineffectual. In the other  
 case, I suppose a man having confessed and entered  
 up a judgment for £. 1000, afterwards mortgages  
 his lands (which are worth twenty times the sum  
 borrowed) for £. 2000: I will attribute the omission  
 to give the mortgagee notice of the judgment to  
 his own ignorance, oblivion, inattention, or total  
 reliance



reliance upon his law agent ; or to the inexperience, inadvertency, or omission of his law agent. There could be no intention of defrauding in the mortgagor ; nor is there a possibility of the lender's losing his money. And will any man find it reasonable or equitable, that such a mortgagor should, in any possible case, be bound to pay more than the principal and interest of the money borrowed ? Whereas by this act he would be not only compelled to pay the principal and interest, which he had borrowed, but also lose the fee-simple of his estate worth twenty times the sum borrowed, which in fact he had only pledged as a security for the repayment of the loan.

Let a person so liable to this statute apply for relief, and who will not say that it would be unjust to refuse it to him ? If the execution of a law be unreasonable and unjust, what obligation is there not upon the legislature to repeal it ?

The act was undoubtedly meant to prevent fraud ; whereas it is scarcely possible to open a door, through which more fraudulent imposition and remediless iniquity can be let in, under the sanction of parliamentary authority. I will not state hypothetical possibilities, but real facts, which have repeatedly come within my own knowledge ; and from them will I argue.

A gentleman of fortune, from play or other folly, wants a temporary sum of money ; he applies to one of that humane accommodating society, who are ever sanguine to relieve the distresses of inconsiderate youth. He grants an annuity, upon his own life, for six years purchase, and executes a bond and warrant of attorney, to confess a judgment upon the debt ; and according to the terms of the advertisement, which brought him hither, in the space of an hour he is accommodated with the money. He pays, departs ; and from shame or vexation, complies strictly with another part of the  
advertisement,

advertisement, which promises the most inviolable secrecy. The year comes round, and he finds the second half yearly payment (for the first had been retained in advance) widely disproportionate from the usual rate of interest; and he accordingly applies to his regular law agent, to raise for him by mortgage as much money, as he wants to pay off this, and perhaps some other private debts. It rarely happens, that money advanced by advertisement in this manner is claimed by the real owner. The link of advertisers, runners and lenders, is seldom known. It so happens, that the lender of the second sum upon mortgage, is not ignorant of the annuity and judgment, though his knowledge of it cannot be legally proved against him; and he certainly will not search the register to find out an incumbrance, the legal ignorance of which, he has in contemplation to turn so much to his own advantage. The borrower intends immediately to redeem his annuity at any price; and, ashamed of the transaction, continues to suppress the knowledge of it from his regular law agent. He executes the mortgage-deed, receives the money, and on the next day undertakes the application of it himself. The agent of the mortgagor, relying either upon the general conduct and management, or the special assurance of his client, that no judgment had been entered up by him, never thinks of advising him to give notice, of what he presumes does not exist. In fact, the greater part of the profession think it the business of the lender's agent, and not of the borrower's, to search the register for judgments. The annuity is redeemed, but no satisfaction is entered upon the judgment; the mortgagor, some time afterwards, resolves upon matrimony, and means to clear his estate before he settles it; he accordingly gives notice to his mortgagee to receive his money. How surprising,

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but

but at the same time how remediless is the demand of the mortgagee to hold the estate, which is of considerable value, as absolutely, as if he had purchased it; and why? Because no notice had been given in writing of the judgment, that had been entered up for the first private debt, and which, alas! survived the mortgage only by one day. It is, I believe, a true fact, that at this hour there are mortgages in this nation to the amount of some millions of money, in which above one half of the mortgagors may, under this statute, be debarred from redemption; and if it were enforced, I know no remedy to such crying injustice against the express letter of a statute in force. The ignorance of the unfair, and the integrity of the honest lenders of money, have hitherto prevented frauds and iniquities from being practised under this statute without end, as they would be without remedy.

When the act gives power to a secondary mortgagee to redeem any former mortgage, upon paying principal, interest and costs, the same difficulty arises upon the amplitude of the security, which I mentioned before. And if the prior mortgage be really clandestine and unknown, there can be no redemption of it by a secondary mortgagee, as is evident. And it is, as the law is now settled, in the power of an iniquitous mortgagor to defeat all mesne incumbrances, by creating an ulterior charge, and permitting such last mortgagee to buy in the first incumbrance, (which hitherto we suppose him to have kept secret) and by those means to acquire a priority for any sum of money over those secondary mortgagees, to whom the act gave a right to redeem the first mortgage. Is not this evidently to leave the juggle and power of defrauding in the hands of the mortgagor? For if there be several mortgagees, the last mortgagee having lent his money upon a valuable consideration, and without notice,

tice, may by purchasing in the first incumbrance, which carries with it the legal estate, protect himself against any mortgagee subsequent to the first and prior to the last (*a*): and it hath been holden, that a person is not bound to take notice of an incumbrance, because it is of record (*b*). It is self-evident, that the only effectual method of preventing fraud by clandestine mortgages, incumbrances, &c. is to take away the possible existence of any clandestine mortgage or incumbrance. And surely it can be no hardship, if a purchaser or mortgagee be bound to look to his own security, if nothing, which is not obviously open to inspection, can affect his purchase or mortgage: nor can there be any difficulty in such requisition, since in the plan proposed, no land in any county will by possibility, be liable to any charge or incumbrance, which may not be seen in the books regularly kept in each county, for a very trivial fee; and of which a short entry may not be also seen in the metropolis, as the grand mart of money negotiations of every species.

### *Of Notice.*

In consequence of many suits instituted by purchasers and mortgagees, who after they had laid out their money, were disturbed in their possessions, or had their titles litigated on account of some prior claims, many decisions have been made, which have established a very nice and curious doctrine concerning notice, which may be either *express* and *actual*, or *implied* and *presumptive*. And these decisions bear very hard, in some cases, upon incumbrancers, whose primary object should ever be sim-

(*a*) Chan. Ca. 21. Boovey and Shipwick; Churchill and Grove, Ch. Ca. 35. 1 Vern. 187, 188. 2 Vez. 573. Strange 240.

(*b*) Grefswold and Marsham, 2 Chan. Ca. 170.

plicity in their title, and facility in maintaining it. Now all this doctrine will be wholly useless, if every deed and will affecting the land of a vendor or mortgagor, shall appear upon the face of the inrolment, to which the purchaser and mortgagee may have access: it will be then impossible, that there should be any occasion for notice; for every one will be presumed cognizant of whatever can by possibility affect his purchase or security, provided it be within the reach of his own knowledge. But as the law is now supposed to be, and is laid down as settled by the modern writers, an incumbrance being of record, a purchaser is *not* bound to take notice of it, at his peril: it must be proved that he had *express notice*, in order for him to obtain relief, which the record is not (a).

Whatever may be the law at present of a record's not being sufficient notice of itself, it is no new nor unreasonable idea, that the inrolment of a deed should of itself be full and express notice to all those, whom the effect of the deed may concern. Thus by an act, which (b) was passed for regulating proceedings in the court of King's Bench at Westminster, it was enacted, "That no corporation, lord or lords of manors, or other person or persons having grants by charter or other good conveyances, who have inrolled, and have had the same allowed in and by the said court, shall hereafter be compelled to plead the same to any inquisition returned by any coroner:" And why? Because the notoriety of inrolment may be known to all, and ought to be noticed by those, whom it concerns. The act imposes a penalty of 5*l.* upon any clerk of the crown, who shall issue any process against a party, who has in-

(a) *Greswold and Marham*, 2 Chancery Cases, 170.

(b) 4 & 5 Will. and Mary, c. 22.



rolled his title, and exempts him from it if it be not inrolled, for the reason given in the act, as follows : “ And whereas divers persons having grants  
 “ of felons goods and deodands, and inrolled and  
 “ pleaded as aforesaid, do many times alien and  
 “ convey their interest therein to other person or  
 “ persons, or by their last wills do devise the same,  
 “ or by their deaths, such estates do descend to  
 “ their heirs, whereby the clerk of the crown of  
 “ the said court is rendered incapable to discern  
 “ where such interest lies, until the person or per-  
 “ sons, to whom such estates are conveyed, devised  
 “ or descended, shall come into the said court,  
 “ and make entry of such their claim as afore-  
 “ said.” The entry of which claim is rightly looked upon as complete notice to those, whom it concerns.

In further support of my opinion, that the entering up or recording incumbrances, (such as judgments for instance) ought to be looked upon as opening a repository of intelligence, to which every person concerned might, and therefore ought, at his own peril to resort, we must reflect, that parliament passed an act (*a*) for *the better discovery of judgments*, &c. in the different courts of record, twice from year to year by way of experiment, which they afterwards (*b*) made perpetual. Now if a purchaser, to be affected by a judgment, must have express notice of it, and the record be not such express notice, what sense or meaning can be given to the preamble of this act? “ Whereas  
 “ great mischiefs and damages happen and come,  
 “ as well to persons in their lifetimes, but more  
 “ often to their heirs, executors and administra-

(*a*) 4 & 5 Will. and Mary, c. 20; and 6 & 7 Will. and Mary, c. 14.

(*b*) 7 & 8 Will. 3. c. 36.



“tors, and also to purchasers and mortgagees, by  
 “judgments entered upon record in their Maje-  
 “sties courts at Westminster, against the persons  
 “defendants, by reason of the difficulty there is in  
 “finding out such judgments.” Now there can  
 be no difficulty in finding out that, of which you  
 have express notice; for *giving notice* is nothing  
 more nor less, than informing a person, in what  
 court, at what time, for what sum, and in whose  
 name the judgment is entered up. And therefore  
 because parliament judged very obviously and  
 wisely, that if the entries were regularly and openly  
 kept of these incumbrances, it would be (as it  
 ought to be) the fault of a purchaser, if he did not  
 look into the dogget himself: and therefore I con-  
 ceive, notwithstanding any determination before or  
 since this act, that a purchaser is not affected by a  
 judgment recorded, without express notice thereof;  
 yet that by this act, the doggeting of the judgment  
 is sufficient notice thereof to a purchaser. At least  
 I cannot otherwise understand the following clause:  
 “And be it further enacted, by the authority afore-  
 “said, that no judgment not doggeted and en-  
 “tered in the books as aforesaid, shall affect any  
 “lands or tenements as to purchasers or mortga-  
 “gees, or have any preference against heirs, exe-  
 “cutors or administrators, in their administration  
 “of their ancestors, testators or intestates estates.”  
 Does not the regular doggeting of judgments  
 (the want of which renders them ineffectual against  
 purchasers and mortgagees) suppose that they are  
 to be searched for; and if they are not (when  
 regularly doggeted) notice to purchasers and  
 mortgagees, why are they to be searched for, and  
 how can they affect them?

According to the sense and spirit, in which I  
 understand both the language of these statutes and  
 of our books, it is no small satisfaction to find my  
 opinion

opinion expressly warranted by the authority of Lord Hardwicke, in the case of *Hine and Dodd*, which was determined on the 13th March 1741 (a), in which a judgment creditor, whose judgment was registered in Middlesex on 12th June 1735, brought a bill to be let in upon an estate preferably to a mortgagee, whose mortgage had been registered on the second of the said month of June, upon a suggestion, that the mortgagee had notice of the judgment, before the mortgage was executed, although it was registered ten days before the registry of the judgment. Much of this case turned upon the nature of the notice given to the mortgagee of the prior judgment, which is irrelevant to the subject under our present consideration; but as to what immediately relates to it, nothing in my opinion can be more peremptorily decisive; than the words of Lord Hardwicke, viz. “The register act, the 7th of Ann. c. 20. is notice to the parties, and a notice to every body: and the reason of this statute was to prevent parole proofs of notice, or not notice.” And he is further reported to have said in this cause, that if it were not so, this statute would be mere waste paper. This very clear and consistent doctrine of Lord Hardwicke seems not to have been attended to by any modern writer upon this subject; for they all unexceptionably take up the doctrine delivered some years before that time by Sir Joseph Jekyl, at the Rolls, on the 16th of February 1737, in the case of *Wrightson and al. v. Hudson and al.* (b); in which “it was resolved, that these statutes avoid only prior charges not registered, but did not give subsequent conveyances any further force against prior ones registered, than they had be-

(a) 2 Atk. 275.

(b) 2 Eq. Ca. Abr. 609.

“ fore : that to have affected Mr. Wrightson, Hud-  
 “ son ought to have given him notice, when he  
 “ advanced his money ; and though Wrightson  
 “ might have searched the register, yet he was not  
 “ bound to do it.” I need make no comment  
 upon these two decisions : I will only repeat, that  
 in the year 1737, Sir Joseph Jekyl said, that a man  
 was not bound to search the register ; and that Lord  
 Hardwicke said, in 1741, that *the register was a*  
*notice to the parties, and a notice to every body.*  
 What more contradictory than these two positions ?  
 For that which a man is not bound to look to,  
 cannot be notice ; and that which is notice, a man  
 is bound to look to, as is self-evident.

In this, as in some other instances, where I have  
 taken the liberty to express my own personal opi-  
 nion upon points of law and equity, I have done  
 it with a view, that the legislature may be induced  
 by one efficient act to reduce the statutes, which  
 relate to the same subject, to consistency both of  
 spirit and letter, and the future decisions of the  
 courts of law and equity to plain rules and fixed  
 principles.

I do not unexceptionally accede to the old ob-  
 servation, that Englishmen seldom make any good  
 laws, till some common calamity causes them : but  
 I flatter myself, that in this instance they will be  
 sensible of the present inconveniences ; and, fore-  
 seeing much future good, will anticipate the re-  
 medy to the further evil consequences of the dis-  
 ease, and thus contradict, what Dr. Swift observed,  
*that Englishmen can feel but not see.* And I think  
 it no impertinent question to propose ; Who does not  
 see, that the obvious purpose of recording a deed  
 is, that those, whom it concerns may take notice  
 of it ?

But it must be remembered, that the registering  
 of a deed is not recording it, as the *inrolment* of  
 a deed

a deed is ; nor is a deed absolutely null for want of being registered : whereas, according to the system, which I have undertaken to suggest and recommend, no deed nor will affecting land will be valid, unless it shall be inrolled within a limited time ; and upon this ground, the argument for a deed inrolled being notice to all mankind, will acquire infinitely more strength, and will fall directly under the reason and doctrine of Lord Hardwicke, in *Hine and Dodd*. The principle of this doctrine appears clearly to be, that the registering acts are meant to operate upon all subsequent incumbrancers, who shall not have received actual notice of a prior incumbrance, by affording them the means of acquiring that knowledge, which will be equivalent to actual notice. So Lord Hardwicke (*a*) decreed, that “ if a deed “ respecting lands in any of the registering coun- “ ties be not registered, and afterwards the same “ lands are sold or mortgaged by a deed properly “ registered, if the person claiming under the se- “ cond deed has notice of the first deed, the person “ claiming under the first deed, though it be not “ registered, shall be preferred to him.” Such a decision could not have been made, if the registry were necessary to the validity of the deed, as is self evident (*b*).” And a subsequent mortgagee having notice of a prior mortgage not registered, will not gain a priority by registering, “ because such conduct is considered in equity as “ fraudulent, and the party hath that notice, which “ the act of parliament intended he should have.” What more clear, than that the act intended that the registering of a deed should operate as notice,

(*a*) *Le Neve v. Le Neve*, 1 Vez. 64.

(*b*) *Cowper's Rep.* 712 and *Powell upon the Law of Mortgage*, 287.

which

which would be absurd in the extreme, if a man searched the registry at his own peril: for it is evidently more advantageous to a purchaser or mortgagee to complete his purchase or mortgage *without* notice, than *with* notice of a prior incumbrance.

In my present pursuit, it is not only my duty to state, what the law of *notice* now is, but more especially what under the proposed act of parliament it ought to be. And I am happy in being able to confirm the doctrine of Lord Hardwicke, in *Hine* and *Dodd*, by the more minute and express opinion of the famed D'Aguesseau, chancellor of France. (a) By laws of that kingdom, as ancient as the sixteenth century, particularly an ordonnance of Henry the Second, of the year 1553, it was ordered that all wills and deeds, containing substitutions of estates, should be registered within a particular period of time. If they were not registered within that time, the courts seem to have doubted whether they were binding even on the parties, in whose favour the substitutions were made; but it was always settled, that the substitutions were of no force against creditors or purchasers. Several points of the laws respecting substitutions being unsettled, and the laws respecting them being different in different parts of the kingdom, they were all reduced into one law by the celebrated ordonnance of August 1747. That ordonnance was framed by the chancellor D'Aguesseau, after taking the sentiments of every parliament in the kingdom upon forty-five different questions proposed to them upon the subject. The thirty-ninth question is, "Whether a creditor or purchaser, having notice of the substitution before his contract or purchase, is to be admitted

(a) Harg. and Butler's Co. Lit. 291.



“to plead the want of registration?” All the parliaments, except the parliament of Flanders, agreed that he was; that to admit the contrary doctrine would make it always open to argument, whether he had or had not notice of the substitution; and this would lead to endless uncertainty, confusion, and perjury; and that it was much better, that the right of the subject should depend upon certain and fixed principles of law, than upon rules and constructions of equity, which must be arbitrary, and consequently uncertain. The ordonnance of August 1747 was framed accordingly. Those, who have commented upon that ordonnance, lay it down as a fixed and undeniable principle, that nothing, not even the most actual and direct notice, countervails the want of registration; so that if a person is a witness, or even a party to the deed of substitution, still if it is not registered he may safely purchase the property substituted, or lend money upon a mortgage of it. See questions concernant les Substitutions, Thoulouse 1770, and Commentaire de l’Ordonnance de Louis XV. Sur les Substitutions, par Mr. Furgole, a Paris, 1767.

### *Practical Applications.*

Let us now, abstractedly from any prejudice of education, habit or profession, argue upon this matter in the dictates of plain common sense. A man wishes to purchase or place out a sum of money upon mortgage, or to buy a rent-charge or annuity, issuing out of land. A title is proposed to him; he submits it to his law agent, who probably carries it to a conveyancing council; he peruses and approves of the title, as submitted to him in the abstract; but directs the solicitor, who brought him the abstract, to examine if the *grant* or *fine* or *recovery*, or *act of parliament*, upon which  
the



the title may hinge, be faithfully abstracted from the record. This is the duty of a conveyancer; for he can only judge of what he sees, and direct what may be effected. The client with the approbation of council confides in the security, and presumes himself out of the reach of any imposition in the transaction, and will naturally conclude, not only, that every step has been taken, that can secure the title, but that no means nor power are left with the vendor or mortgagor or grantor of the annuity or rent-charge of overreaching or deceiving him in the title. And will he not moreover naturally conclude, if there be any repository of information to resort to concerning a man's title to land, that if it be not a source of satisfactory and conclusive intelligence, it must lead to deceit and error, by insuring doubt and uncertainty?

What then is the fact? A vendor or mortgagor may notwithstanding all, that has appeared to counsel upon the face of the abstract, and all the intelligence and information, which the most diligent and attentive solicitor can by possibility acquire, have previously sold, mortgaged, charged, or settled the whole or any parts of the land in question, without an obligation of rendering notorious any one act, by which he may have made such sale, mortgage, charge or settlement. Whence then arises the necessity, or even expediency, of making public and notorious some acts, which affect the title of lands, whilst the owner is empowered to suppress many others, by which he can equally affect them? He cannot cut off the expectant rights of a child or a remainder-man in an entailed estate, but by matter of notoriety and record: and is there not as much or more reason, why that act should be public and notorious, by which a tenant in fee-simple counteracts and defeats the known, settled and certain course of the law,

law, which would have cast the inheritance upon the heir at law, if he had not counteracted and defeated its effects; and this he has it in his power to do by a private deed in his lifetime, or by will after his decease; neither of which needs to be rendered public or notorious. He may by a private deed charge all his lands with a debt; but by confessing a judgment, which equally charges them, it must be by matter of record and notoriety.

I may be blamed and censured by some, for divulging the *arcana* of the profession, and uttering truths, which may be thought to disturb the peace and quiet of many, whose money is now placed out upon landed securities; but I can neither invent nor conceive a stronger reason, why the law should be altered, than because the knowledge of it disturbs the peace and endangers the security of individuals. It is then a truth no less certain than extraordinary, that in passing many titles of land, it is absolutely necessary, that very great reliance and essential confidence should be placed in the personal honour and integrity of individuals, against whose deceit, fraud and imposition, should they not be honest and honourable, there are absolutely no means of providing. To prove this, I will state a case that has very lately happened, which as to many points applies strictly to my argument. I have met with several other cases within my own knowledge, which turn upon the same point. But should even the case I put, be merely suppositious, from the probability of its frequently happening, it would equally enforce my arguments.

*The Cases of Rickman against Morgan (a), and Pearson against Morgan (b).*

Mr. James Butler of Suffex was entitled, under his father's marriage-settlement, to an estate charged with £. 8000 for one younger child of the marriage; which settlement contained a proviso, that if the father should give to any of his daughters or younger sons any money or lands, for or in advancement in marriage, or otherwise, the value thereof should be deducted from the portion, unless he should by writing declare to the contrary. The father gave the residue of his personal estate to his only younger child Mr. John Butler, and made other advancements to him during his life. The father being dead, Mr. James Butler suffered a common recovery, by which he obtained a fee-simple in the lands. In 1773, Mr. John Butler applied to Mr. Pearson to lend him £. 3000 on the security of the £. 8000 portion, for which he assigned £. 5000, part of the said £. 8000, as a security. Mr. James Butler, who from the time of his suffering the common recovery, held the fee-simple of the estate to his death, paid the interest of the £. 8000. Mr. Pearson, before he lent the money, applied by his solicitor, Mr. Hull, to Mr. James Butler, and desired to be informed by him, whether the £. 8000 was a subsisting charge on the estate; when Mr. James Butler declared that it was, and that he might safely advance his money on the security. Mr. James Butler had possession of the settlement, and knew of the advancements of the father to his brother; but not supposing the por-

(a) Brown's Reports, Vol. I. p. 63.

(b) D<sup>o</sup> Cases argued and determined in 28th of his present Majesty, p. 334.

tion affected by them nor by the gift of the residue, did not reveal the same to Mr. Pearson's solicitor. Upon the death of Mr. James Butler some time after, his estates descended upon his two daughters. The husband of one of them (Mr. Bennet) in 1774 had also advanced £. 2978 to Mr. John Butler, upon the security of the £. 8000 portion, (subject to the first £. 3000 advanced by Mr. Pearson). Upon the 24th of last June, Mr. Justice Buller, sitting for Lord Chancellor, said, " he strongly inclined to think " it a satisfaction;" and the Lord Chancellor himself, on the 27th of last November, decreed the gift of the residue to be a satisfaction for the portion secured by the marriage-settlement. But as to the £. 3000 lent by Mr. Pearson, the Court held, that Mr. James Butler's declaration to the lender's solicitor bound both him and his lands; and that sum was therefore directed to be raised and paid to Mr. Pearson. But no relief hath been given to Mr. Bennet for the money he advanced.

If Mr. James Butler had remained tenant in tail of the estates charged with £. 8000, and he had died insolvent as to his personality, I know not what redress Mr. Pearson would have had; but he had acquired the fee-simple, and it was bound in equity by his verbal undertaking. It is not possible to adduce a stronger instance than this case, to prove the truth of what I have advanced concerning the necessity there often is of making personal confidence the ground of opinion in the approbation of a landed security for money. The words of the Court, in delivering the decree in this cause, are: " The enquiry was a very proper one " on the part of the plaintiff (viz. Pearson) and " completely repels the imputation of negligence " in his agent; and the enquiry was properly made " of the party immediately interested. James at  
" the

“ the time of the enquiry, had the equitable inter-  
 “ rest in the estate, and upon the application, as-  
 “ sured the plaintiff, that he might safely lend his  
 “ money : the enquiry was the most material the  
 “ plaintiff could make.” It appears from the case,  
 that Mr. Hull was also concerned for Mr. Ben-  
 net, and it is to be presumed, that having done  
 (by the confession of the Court) whatever he could  
 do, to acquire the knowledge and information which  
 was requisite for his client to know about the  
 charge and term, upon the security of which Mr.  
 Pearson lent his money, he could retain no doubt  
 about recommending it to his other client Mr.  
 Bennet, who lent £.2978 upon the same se-  
 curity, the repayment of which has not as yet been  
 decreed. The material point of law in this case,  
 was the decision, after several hearings, that the  
 residue of a personal estate is to be taken as a  
 satisfaction for a portion. As this point had not  
 before been decided, it could not be imputed to  
 the negligence nor ignorance of the agent or his  
 conveyancer, (who was very eminent in the pro-  
 fession, and is since dead) that they did not object  
 against the security upon this ground. But as to  
 my argument, it would have been the same, if all  
 the advancements had been made by the father in  
 his lifetime. Here was no attempt at fraud in  
 either of the Messrs. Butler ; but in this supposition,  
 there were no sure means of coming at the know-  
 ledge of the prior advancements. The law re-  
 quired no sort of notoriety to attend the fact :  
 both sons denied it ; the conveyancer was not to  
 suppose, what was not stated to him ; the agent  
 could not acquire the information, to submit it to  
 the conveyancer : and thus, without any blame  
 imputable to the agent ; without any reflection up-  
 on the conveyancer, Mr. Pearson but for the  
 personal and accidental undertaking of Mr. James  
 Butler,



Butler, would have been) and Mr. Bennet actually is exposed to the loss of a large sum of money under all the sanction, protection and security, which the law, as it now stands, affords him for his property. I go still farther; for, supposing a conveyancer should state the strongest doubts, whether the whole or part of the fortune had been advanced or raised, yet are there no possible means of acquiring this knowledge for certain, against the determination of the two sons to suppress the facts.

The ancient law and policy of our ancestors could not, consistently with that notoriety, which, as I have so often said, they thought necessary to attend every act of alienation or affection of landed property, admit into conveyances of land, all those modern *restraining* and *enabling* powers, the creation, execution and effects of which, have constituted a very considerable branch of equity. But of the doctrine of powers, it is not my purpose to say any more, than that from their very nature, the want of notoriety in the creation, as well as execution of them, must ever leave to purchasers and mortgagees much personal confidence to rely upon for the security of their titles. And since a great part of family settlements at present turns upon these very powers, under which the portions for the younger children of families are often provided and secured, it becomes very essential and important to the community, that these titles should be clear and certain; for when such portions are raised and paid to younger children, it rarely happens, that the owners of the lands, which are charged with them, are capable of paying off the money, and it is generally done by others, who advance it upon the security or under the deed creating the powers. And if there can possibly exist a confederacy between father and son, or the younger children themselves and their trustees,



tees, or even if imposition, treachery or deceit, may be supposed to exist in any one of them; by what means can the most attentive attorney, the most cautious conveyancer, and the most wary lender, prevent, counteract, or hinder the fraud? We have seen the effects of involuntary error in the judgment of Messrs. Butler. How necessary then it is to establish an unerring source of notoriety and information, which every purchaser, lender or mortgagee may resort to with confidence and certainty? For it is evident, that where one part of a title must be made public and notorious, and the other part of it requires no such notoriety, there ever will exist more doubt and uncertainty about the suppressed part of the title, than if none of it had been made public. What has been said, will I hope be conclusive, that no charge nor discharge of land ought to be effected, but by a deed or act of public notoriety.

*More circumstantial Proofs.*

The more we reflect upon this subject, the more circumstances shall we find, that render the notoriety I have been speaking of, more necessary at present, than at any past period of time. The first of these is the more general subdivision and equal partition of landed property: by which means, titles are multiplied and become more complex by derivation, and therefore less certain, because less notorious, for want of title deeds; which, when estates are transferred in parcels, or otherwise partially affected, cannot be delivered over to each purchaser or incumbrancer, as if the whole estate, to which the deeds are the muniments, had been sold or affected together. And I know no reason, which more emphatically proves the expediency of my proposal, than the doctrine and pre-

sent law concerning the delivery, possession and custody, of title deeds.

*Of Title Deeds.*

The cases, which have been determined, relative to the delivery, possession and custody, of title deeds and notice to purchasers and incumbrancers, have very frequently arisen from matters in registering counties. But whatever relates to the registering acts, shall be reserved for future consideration.

I do not find that the delivery, actual possession or custody of the title deeds, is essential to the validity of a purchase or mortgage; for a man seised in fee-simple of ten thousand acres of land may validly mortgage or sell it out in five hundred parcels, and yet it will be impossible to deliver title deeds to each mortgagee and purchaser. And if the delivery of the title deeds were essential to the validity of a mortgage or purchase, yet in many cases, it would be of no avail, especially since it has been the general practice to make two and sometimes more original parts of one and the same deed, (and without any thing appearing upon the face or back of such deeds, to shew how many parts of them were executed). A man having collected for sixty years back duplicates of all his title deeds, might at different times make out such a title, as would and must, in the nature of business, be approved of by counsel, and sell and mortgage the land to A. which he had previously sold or mortgaged to B. without a possibility of the preconveyance being discovered by the most diligent attorney, or scrupulous and intelligent conveyancer.

*A supposed Case.*

I will suppose two common recoveries suffered, and two marriage settlements made successively of the manor of Dale; and these to run back into the last century. The reversion in fee, under the second settlement, vests in the heir at law of the settler. He is in possession of the land, and of two sets of these settlements, which are the title deeds, and prove, to the satisfaction of the conveyancer, the right and title of the reversioner's heir at law. If these original settlements are given up to a purchaser, and it is known from examination, or from official extracts, that the recoveries have been well suffered, the settlements themselves being the deeds to make the tenants to the *præcipe*, (or what by nonprofessional persons are called the recovery deeds); I say that a conveyancer is *functus officio*, by approving of the title, and recommending the purchase or mortgage: and even should he state in his opinion the possibility of a preconveyance or sale or mortgage to another person, I know of no means whatever, by which such suggestion of doubt could be cleared away to his mortgaged client, nor of any remedy that his client would have against the land or the prior purchaser or mortgagee. For I think, that it will be readily allowed, that the personal asseverations, pledges and covenants of a person so void of good faith as to attempt such a fraud, will afford but slight relief to this second purchaser or mortgagee. Such a case could not by possibility happen, if every deed was null without enrolment, and the enrolment was full notice to a purchaser or mortgagee.

*A real*

*A real Case anonymous.*

A person, in a large trading maritime town, had taken a long building lease of an extensive piece of ground : he mortgaged parts of it to two persons successively, and delivered copies of his title deeds to the mortgagees, alledging, that he could not deliver up the original title deeds, as they affected other lands besides those, that were mortgaged, which he had in contemplation to assign and underlet in different parcels : at length, after he had twice mortgaged the same parcels of ground, without giving any notice of the first mortgages, he procures a third person to advance him a sum of money upon them, larger than either of the two first mortgages ; and to this third mortgagee he delivers his title deeds. The question is, to whose debt shall the land be first liable ? For it will barely answer one of the sums advanced upon it. I need not say, that the personal responsibility of this iniquitous mortgagor is of little avail. The case is intended to be brought into court. How necessary for the prevention of such practices, is a repository of infallible certitude, by which a lender may know the security, upon which he advances his money ?

*Of the Registry of Deeds and Wills by Act of Parliament.*

I cannot introduce this subject more properly, than by repeating the preamble of the 2d and 3d of Queen Ann, which was the precedent and sample of the other registering acts. And what this act recites of the west-riding of the county of York will appear at present more applicable to the nation at large, on account of the extended state of its commerce, than it was at that time applicable

cable to the west-riding of the county of York. “Whereas the west-riding of the county of York is the principal place in the north for the cloath manufactory, and most of the traders therein are freeholders, and have frequent occasions to borrow money upon their estates, for managing their said trade, but for want of a register, find it difficult to give security to the satisfaction of the money-lenders, (although the security they offer be really good); by means whereof the said trade is very much obstructed, and many families ruined.” Such was the sense of the legislature, respecting a very populous and trading district; and such, I am confident, to the considerate part of the nation, will it be for the country at large, in order to enable vendors and mortgagors to make such clear and satisfactory titles, as will induce monied men to invest their money in real securities. One and the same principle actuated them in that and the other three registering acts, and us in our present attempt. Let us consider the means they have adopted, to carry that principle into practice.

There is not a doubt, but that these registries were planned, formed and established, for the mutual benefit and conveniency of lenders and borrowers of money on land security. The preamble of an act is called by Lord Coke, the key to open the meaning and intent of the statute; and by the preamble to the first registering act of Queen Ann, which has been quoted, it evidently appears, that the evil intended to be remedied by the statute was the want of notoriety in the titles of land owners, from which the investing of money in purchases and on mortgages was obstructed and rendered difficult. Let us then see, what remedy, and in what manner, the act has provided against this evil.



It enacts, that (a) “ a memorial of all deeds  
 “ and conveyances, which from and after the nine  
 “ and twentieth day of September in the year of  
 “ our Lord one thousand seven hundred and four,  
 “ shall be made and executed, and of all wills  
 “ and devises in writing made or to be made and  
 “ published, where the devisor or testator shall die  
 “ after the said nine and twentieth day of Sep-  
 “ tember, of or concerning, and whereby any ho-  
 “ nors, manors, lands, tenements or hereditaments,  
 “ in the said west-riding, may be any way af-  
 “ fected in law or equity, may, at the election of  
 “ the party or parties concerned, be registered in  
 “ such a manner, as is hereinafter directed ; and  
 “ that every deed or conveyance that shall, at any  
 “ time after any memorial is so registered, be made  
 “ and executed of the honors, manors, lands, te-  
 “ nements or hereditaments, or any part thereof,  
 “ comprized or contained in any such memorial,  
 “ shall be adjudged fraudulent and void against  
 “ any subsequent purchaser or mortgagee for va-  
 “ luable consideration, unless such memorial there-  
 “ of shall be registered, as by this act is directed,  
 “ before the registering of the memorial of the  
 “ deed or conveyance, under which such subse-  
 “ quent purchaser or mortgagee shall claim ; and  
 “ that every devise by will of the honors, manors,  
 “ lands, tenements or hereditaments, or any part  
 “ thereof mentioned or contained in any memo-  
 “ rial so registered as aforesaid, that shall be  
 “ made and published after the registering of such  
 “ memorial, shall be adjudged fraudulent, and void  
 “ against any subsequent purchaser or mortgagee  
 “ for valuable consideration, unless a memorial of  
 “ such will be registered in such manner as is here-  
 “ inafter directed.”

(a) 2 & 3 Ann, c. 4.

E 4

And



And it enacts, that “all and every memorials  
 “so to be entered or registered, shall be put into  
 “writing, in vellum or parchment, and directed  
 “to the register of the said office; and in case of  
 “deeds and conveyances, shall be under the hand  
 “and seal of some or one of the grantors, or some  
 “or one of the grantees, his or their guardians  
 “or trustees, attested by two witnesses, one where-  
 “of to be one of the witnesses to the execution  
 “of such deed or conveyance; which witness shall,  
 “upon his oath before the said register or his de-  
 “puty, prove the signing and sealing of the said  
 “memorial, and the execution of the deed or  
 “conveyance mentioned in such memorial; and  
 “in case of wills, the memorials shall be under  
 “the hand and seals of some or one of the devi-  
 “sees, his or their guardians or trustees, attested  
 “by two witnesses, one whereof shall, upon his  
 “oath before the said register or his deputy, prove  
 “the signing and sealing of such memorial; which  
 “respective oaths, the said register or his deputy,  
 “is hereby empowered to administer.”

And it further enacts, that “every memorial  
 “of any deed, conveyance or will, shall contain  
 “the day of the month, and the year, when such  
 “deed, conveyance or will, bears date, and the  
 “names and additions of all the parties to such  
 “deed or conveyance, and of the deviser, or testa-  
 “trix to such will, and of all the witnesses to such  
 “deed, conveyance or will, and the places of their  
 “abode, and shall express or mention the honors,  
 “manors, lands, tenements and hereditaments,  
 “contained in such deed, conveyance or will, and  
 “the names of all the parishes, townships, ham-  
 “lets, precincts or extraparochial places, within  
 “the said west-riding, where any such honors,  
 “manors, lands, tenements or hereditaments, are  
 “lying or being, that are given, granted, convey-  
 “ed,

“ ed, devised, or any way affected or charged by  
 “ any such deed, conveyance or will, in such man-  
 “ ner, as the same are expressed or mentioned in  
 “ such deed, conveyance or will, or to the same  
 “ effect; and that every such deed, conveyance  
 “ and will, or probate of the same, of which such  
 “ memorial is so to be registered, as aforesaid,  
 “ shall be produced to the said register or his de-  
 “ puty, at the time of entering such memorial,  
 “ who shall indorse a certificate on every such deed,  
 “ conveyance and will, or probate thereof, and  
 “ therein mention the certain day, hour and time,  
 “ on which such memorial is so entered and re-  
 “ gistered, expressing also in what book, page and  
 “ number, the same is entered; and that the said  
 “ register, or his deputy, shall sign the said certi-  
 “ ficate when so indorsed; which certificates shall  
 “ be taken and allowed as evidence of such re-  
 “ spective registries in all courts of record what-  
 “ soever; and that every page of such register-  
 “ books, and every memorial, which shall be en-  
 “ tered therein, shall be numbered, and the day  
 “ of the month, and the year, and hour, or time  
 “ of the day, when every memorial is registered,  
 “ shall be entered in the margins of the said re-  
 “ gister books, and of the said memorial; and that  
 “ every such register shall keep an alphabetical  
 “ calendar of all parishes, extraparochial places  
 “ and townships within the said west-riding, with  
 “ reference to the number of every memorial, that  
 “ concerns the honors, manors, lands, tenements,  
 “ or hereditaments, in every such parish, extrapa-  
 “ rochial place, or township respectively, and the  
 “ names of the parties mentioned in such memo-  
 “ rial; and that such register shall duly file every  
 “ such memorial in order of time, as the same  
 “ shall be brought to the said office, and enter or  
 “ register

“ register the said memorials in the same order,  
 “ that they shall respectively come to hand.”

There is an exception, that the act shall not extend to copyhold estates, or to any lease not exceeding twenty-one years, where the actual possession and occupation goes along with the lease. It is obvious, why copyhold estates are taken out of the statute; for their surrender in the manor court answers the notoriety of transfer, which was evidently intended to be introduced and established throughout the west-riding of the county of York by the registry.

The 2d and 3d of Ann, for establishing a registry in the west-riding of York, was the first act relating to the registry that passed; and although the framers of that act appear not to have been complete masters of the subject; yet it gave rise to the experiment, and turned people's thoughts more to the subject, which, by the following registering acts, received some additional light and improvement. Each of these acts most pointedly tends to establish the principles, grounds and reasons, upon which I am attempting to shew the expediency, or rather the necessity, of an universal inrolment. As much, as hath been quoted of the first registering act, is repeatedly enacted by the other acts, which successively established the registry in the east-riding of the county of York, in the 6th of Queen Ann; in the county of Middlesex, in the 7th of Queen Ann; and in the north-riding of the county of York, in the 8th of George II.

The first registering act passed in 1703; and in 1706, it was found proper to pass (a) “ An act  
 “ *for inrolment of bargains and sales within the said*  
 “ *west riding of the county of York in the register*  
 “ *office, there lately provided, and for making the said*

(a) 5 Ann, c. 18.

“ *register more effectual.*” The primary reason for  
 passing this act is set forth in the preamble of it:  
 “ Whereas by an act of parliament made in the  
 “ 27th year of the reign of King Henry the 8th,  
 “ intituled, *For inrolments of bargains and sales*,  
 “ it is enacted, That no manors, lands, tenements  
 “ or other hereditaments, shall pass, alter or change  
 “ from one to another, whereby any estate of in-  
 “ heritance or freehold shall be made or take  
 “ effect in any person or persons, or any use there-  
 “ of to be made, by reason only of any bargain and  
 “ sale thereof, except the said bargain and sale be  
 “ made by writing indented and sealed, and in-  
 “ rolled in one of the king’s courts of record at  
 “ Westminster, or else within the same county or  
 “ counties, where the same manors, lands or tene-  
 “ ments, so bargained and sold lie or be, before  
 “ the custos rotulorum, and two justices of the  
 “ peace, and the clerk of the peace of the same  
 “ county or counties, or two of them at the least,  
 “ whereof the clerk of the peace to be one; which  
 “ act hath been found by experience to be of little  
 “ or no use within the west-riding of the county of  
 “ York, as to the inrolments of bargains and sales  
 “ within the said west-riding, for that the clerk of  
 “ the peace thereof for the time being, who hath  
 “ the keeping of the said inrolments within the  
 “ said west-riding, is not by the said act enjoined  
 “ to give any security for the safe keeping, nor  
 “ under any penalty for the negligent keeping of  
 “ the said inrolments, nor is there by the said act  
 “ any certain place appointed for the keeping  
 “ thereof: And whereas by an act of parliament  
 “ made in the second year of his present Majesty’s  
 “ reign, intituled, *An act for the public registering*  
 “ of all deeds, conveyances and wills, that shall be  
 “ made of any honors, manors, lands, tenements  
 “ or hereditaments, within the west-riding of the  
 “ county

“ county of York, after the nine and twentieth day  
 “ of September 1704; a public office hath been  
 “ erected and established at Wakefield, within the  
 “ said west-riding, at the public charge thereof,  
 “ for registering and safe keeping of memorials,  
 “ of all deeds, conveyances and wills, within the  
 “ said riding, and a public register hath been  
 “ chosen, who hath according to the directions of  
 “ the same act, given sufficient security for the due  
 “ execution of the said office.” There is certainly  
 much good sense and reason in this; and it applies  
 as strongly to every part of the nation, as it does  
 to the west-riding of the county of York: but be-  
 sides the inconveniency and mischief which is here  
 alledged, there is another very objectionable cir-  
 cumstance, that attends the present law; it creates  
 and leaves a doubt in those, who have occasion to  
 search for any such deed; for after having per-  
 haps searched in vain the four courts of record, for  
 the inrolment of a deed; from the infrequency of  
 inrolling deeds with the clerk of the peace, it fre-  
 quently does not occur to them to extend their  
 search to the county, where the lands lie; and if  
 thought of, every one knows the little satisfaction,  
 that probably would attend a search, where there is  
 no regular deposit of the records, where there is no  
 responsibility upon the clerks to preserve them, no  
 obligation to keep them orderly and open to in-  
 spection, and little practice of entering them upon  
 the rolls. These are reasons, which speak the ex-  
 pediency of abstracts being entered in each re-  
 spective county, of deeds, which affect lands lying  
 in divers counties, or which are inrolled in any one  
 of the courts of record, as it is provided for by the  
 draft of the bill subjoined to these sheets.

The act very properly therefore gives to every  
 bargain and sale inrolled in the register office, at  
 Wakefield, the same force, as if it had been in-  
 rolled



rolled in a court of record, or before the custos rotulorum, &c. according to the requisition of the act of Henry VIII. and registered according to the second and third of Ann.

In the first registering act, no mention was made of judgments, statutes and recognizances, which affect lands; and yet they ought to be as notorious and public, as deeds and wills affecting lands, in order that the title of the land may be open and known to mortgagees, incumbrancers and purchasers. It is therefore enacted, that “no judgment, “statute or recognizance (other than such as shall “be entered into in the name and upon the pro- “per account of her Majesty, her heirs and suc- “cessors) which shall be obtained, or entered into, “after the said four and twentieth day of June “in the said year of our Lord one thousand seven “hundred and seven, shall affect or bind any ma- “nors, lands, tenements or hereditaments, situate, “lying and being in the said west-riding, but only “from the time that a memorial of such judgment, “statute or recognizance, shall be entered at the “said register-office, expressing and containing, in “case of such judgment, the names of the plain- “tiffs, and the names and additions therein of the “defendants, the sums thereby recovered, and the “time of the signing thereof, and in case of sta- “tutes and recognizances, expressing and con- “taining the date of such statute or recognizance, “the names, and additions of the cognizers and “cognizees therein, and for what sums, and before “whom the same were acknowledged; and that in “order to the making an entry of such memorials “of judgments, statutes, and recognizances as “aforesaid, the party and parties desiring the same, “shall produce to and leave with the said register, “or his deputy, to be filed in the said public or “register office, a memorial of such judgment,  
 “statute



“ statute or recognizance, signed by the proper  
 “ officer, who shall sign such judgment, or his suc-  
 “ cessor in the same office, or by the proper officer,  
 “ in whose office such statute or recognizance shall  
 “ be inrolled, together with an affidavit sworn be-  
 “ fore one of the judges at Westminster, or a  
 “ master in Chancery, that such memorial was duly  
 “ signed by the officer, whose name shall appear to  
 “ be thereunto set; which memorial such respec-  
 “ tive officer is hereby required to give such plain-  
 “ tiff or plaintiffs, cognizee or cognizees, or his,  
 “ her or their executors or administrators, or at-  
 “ torney, or any of them, he, she or they, paying  
 “ for the same the sum of one shilling and no  
 “ more.”

And there is a proviso in the act, that “ if any  
 “ judgment, statute, or recognizance, be registered  
 “ in the said register-office, within thirty days,  
 “ after the acknowledgment or signing thereof,  
 “ all the lands that the defendant or cognizor  
 “ had at the time of such acknowledgment or  
 “ signing, shall be bound thereby.”

But as it was found necessary to enter and pub-  
 lish every charge and incumbrance upon the  
 land; so was it reasonable, whenever these charges  
 or incumbrances were satisfied and paid off, that  
 the discharge or exoneration of the land should  
 also be known, as its value and price thereby  
 would vary much to a purchaser or incumbran-  
 cer: for it frequently happens, that land is affected  
 and incumbered by a deed, and the money or  
 debt is discharged, without the parties entering  
 into any new deed or writing, and therefore the  
 act enacts, that “ in case of mortgages, that shall  
 “ be inrolled in the said register-office, pursuant  
 “ to this act, or whereof memorials have been or  
 “ shall be entered, pursuant to the said act made  
 “ in the second year of her present Majesty’s reign;  
 “ and

“ and also in case of judgments, statutes and re-  
 “ cognizances, whereof memorials shall be entered  
 “ in the said register-office, pursuant to this act;  
 “ if at any time afterwards, a certificate shall be  
 “ brought to the said register or his deputy, signed  
 “ by the respective mortgagors and mortgagees  
 “ in such mortgage, plaintiffs and defendants in  
 “ such judgment, cognizor or cognizees in such  
 “ statute or recognizance respectively, their respec-  
 “ tive executors, administrators or assigns, and at-  
 “ tested by two witnesses, whereby it shall appear,  
 “ that all monies due upon such mortgage, judg-  
 “ ment, statute or recognizance respectively, have  
 “ been paid or satisfied in discharge thereof, which  
 “ witnesses shall upon their oath, before the said  
 “ register or his deputy, (who are hereby respec-  
 “ tively impowered to administer such oath) prove  
 “ such monies to be satisfied or paid accordingly,  
 “ and that they saw such certificate signed by the  
 “ said mortgagors and mortgagees, plaintiffs and  
 “ defendants, cognizors and cognizees respectively,  
 “ their respective executors, administrators or as-  
 “ signs; that then, and in every such case, the  
 “ said register or his deputy, shall make entry in  
 “ the margin of the said register books, against  
 “ the inrolment of such mortgage or registry of  
 “ the memorial thereof, and against the registry  
 “ of such judgment, statute or recognizance re-  
 “ spectively, that such mortgage, judgment, sta-  
 “ tute or recognizance respectively, was satisfied  
 “ and discharged according to such certificate, to  
 “ which the same entry shall refer; and shall after  
 “ file such certificate to remain upon record in the  
 “ said register-office.”

There is one singularity in this act, that I can-  
 not pass over without some observation; it enacts,  
 that “ all copies of the inrolments thereof remain-  
 “ ing on record in the said register-office, shall be  
 “ allowed

“ allowed in all courts, where such bargains and  
 “ sales, or copies, shall be produced to be as good  
 “ and sufficient evidence, as any bargains and sales  
 “ inrolled in any of the courts at Westminster, and  
 “ the copies of the inrolments thereof.” This  
 clause, as well as the other amendments of the  
 second and third of Ann, is introduced into the  
 sixth of Ann, by which a register office is estab-  
 lished in the east-riding of the county of York ;  
 and yet within four years after that time, viz. in  
 the tenth of Ann (*a*), the legislature found it ne-  
 cessary to pass an express law to make office copies  
 of bargains and sales inrolled under the statute of  
 Henry the Eighth, evidence. Such different acts  
 upon the same subject, argue but little knowledge  
 of the law, in the framers of the acts: for if the  
 tenth of Ann were necessary to be passed, the co-  
 pies of bargains and sales were not evidence in any  
 court; and then this clause of the fifth of Ann is  
 absolutely futile and absurd; for it does not abso-  
 lutely make such copies evidence, but it only  
 makes them *as much evidence* as other copies, which  
 were not evidence at all; and if copies of inrol-  
 ments were evidence before the tenth of Ann, then  
 is that statute nugatory and redundant and mis-  
 chievous, by confining its effects to one sort of in-  
 rolled deeds, when it ought to have extended them  
 to all; for many sorts of deeds besides bargains  
 and sales, were inrolled by the common law, before  
 the statute of Henry VIII. as they still may be.

The preamble of the seventh of Queen Ann, for  
 establishing a registry in the county of Middlesex,  
 which is one and the same in effect as in the three  
 other registering acts, speaks such forcible language  
 in support of an universal inrolment act, that I  
 cannot pass it by unnoticed (*a*). “ Whereas by

(*a*) 10 Ann, c. 18.

(*b*) 7 Ann, c. 20.

“ the

“ the different and secret ways of conveying lands,  
 “ tenements, and hereditaments, such, as are ill  
 “ disposed, have it in their power to commit fraud,  
 “ and frequently do so, by means whereof several  
 “ persons, who through many years industry in  
 “ their trades and employments, and by great frugality, have been enabled to purchase lands, or  
 “ to lend monies on land security, have been undone in their purchases and mortgages, by prior  
 “ and secret conveyances, and fraudulent incumbrances; and not only themselves, but their  
 “ whole families thereby utterly ruined.”

Who will seriously admit even the possibility of such evils, and deny that a remedy ought to be applied to them? And who will hesitate to answer this obvious question? When land is brought to market, should there exist a possibility of its being clogged with hidden charges and secret incumbrances? Besides the alterations or improvements already mentioned, introduced into the registering acts by the sixth of Ann (all of which are incorporated by that act into the first registering act for the west-riding) there is one other, which is introduced by that act into all the three acts for the three several ridings for the county of York, but which never was introduced into that for the county of Middlesex; I do not in fact see that it hath any immediate connection with the registry or inrolment, any more than altering a form of pleading, has with recording a verdict or judgment (a).”

“ And be it further enacted by the authority aforesaid, that in all deeds of bargain and sale hereafter inrolled, in pursuance of this act, whereby any estate of inheritance in fee-simple is limited to the bargainee and his heirs, the words Grant, Bargain, and Sale, shall amount to, and be con-

(a) 6 Ann, c. 35. sect. 30.

“strued and adjudged in all courts of judicature  
 “to be exprefs covenants to the bargainee, his  
 “heirs and assigns, from the bargainor, for himself,  
 “his heirs, executors and administrators, that the  
 “bargainor, notwithstanding any act done by him,  
 “was at the time of the execution of such deed  
 “seised of the hereditaments and premises thereby  
 “granted, bargained and sold, of an indefeasible  
 “estate in fee simple, free from all incumbrances  
 “(rents and services due to the lord of the fee  
 “only excepted) and for quiet enjoyment thereof,  
 “against the bargainor, his heirs and assigns, and  
 “all claiming under him, and also for further  
 “assurance thereof to be made by the bargainor,  
 “his heirs and assigns, and all claiming under him,  
 “unless the same shall be restrained and limited  
 “by exprefs particular words contained in such  
 “deed; and that the bargainee, his heirs, executors,  
 “administrators and assigns respectively, shall and  
 “may in any action to be brought, assign a breach  
 “or breaches thereupon, as they might do in case  
 “such covenants were exprefsly inserted in such  
 “bargain and sale.”

This idea, I presume, was borrowed from Sir  
 Matthew Hale, who in the before-mentioned pam-  
 phlet (p. 37) says, “that to prevent the length of  
 “covenants in deeds, there be thought of certain  
 “words, that may carry in them the strength of co-  
 “venants or warranties; as for instance (*dedi*, or  
 “*give*) to include a warranty and covenant against  
 “all men, and also for further assurances; (*grant*)  
 “to include a warranty and covenant against the  
 “party and all claiming under him, and for fur-  
 “ther assurances for seven years; (*deliver*) to in-  
 “clude a warranty and covenant against the party  
 “and his ancestors and all claiming under them,  
 “and for further assurances within seven years;  
 “and divers instances of this kind might be con-  
 “tinued



“tinued by short words to include large sentences (a).

Certain it is, that the present mode of conveyancing is more formal and prolix, than is necessary to give effect to a deed. The nicety and extreme caution of some, the diffidence of others, and fear to omit any thing, that they can suppose will be binding in a deed, and perhaps the lucrative views of others, in extending conveyances with their wishes or love of gain, are the unjustifiable and unsatisfactory reasons for keeping on foot this formal prolixity in modern conveyances. But when we reflect, that every man is entitled to draw his own deeds and wills, and that he may use whatever words and terms he pleases to express his own meaning and intentions, and that each deed and will differs one from the other, it will not be found feasible to reduce conveyances, like certain writs and processes, to a fixed form of words, terms, and sentences. I shall say no more upon this subject, as it is not connected with the notoriety of deeds and muniments touching the title of lands: but if hereafter any innovation should be attempted to be introduced into the practice of conveyancing, it surely ought to be submitted in a full and comprehensive view to the legislature, that they may act therein as in their wisdom shall seem proper.

The last registering act, which is the eighth of Geo. the 2d, by which a register office was erected and established in the north-riding of the county of York, has no further improved upon any of the former registering acts, than by expressing a sense of the inefficient method of entering memorials in that inept, mutilated, and ineffectual manner prescribed by that act, as well as by the three other

(a) The word *grant* implies a general warranty; Croke J<sup>a</sup>. 234. Hil. 7. Jac.



registering acts : it gives licence to inrol deeds and wills at large, instead of registering them in the manner before mentioned. It was rightly judged, that if a repository was once established for the memorials of deeds, it ought to be a complete conservatory of men's titles to their estates. For this end, the purport of every deed should be known, but by a memorial, the purport of no deed can be known.

(a) “ And whereas deeds have been often destroyed by fire and other accidents, be it further enacted by the authority aforesaid, that from and after the said 29th day of September 1736, any person or persons having or claiming title to any honors, manors, lands, tenements or hereditaments, in the said north-riding, may register at full length in the said register-office, all and every or any the deeds, writings, wills or conveyances, by or under which, such title shall be claimed, and which shall be made and executed, or signed and published, and in the case of wills, where the deviser or testatrix shall die after the said 29th day of September in the year of our Lord 1736 ; and the said register or his deputy is hereby authorized to enter and inrol all such deeds, writings, wills and conveyances, as shall be so brought to be registered at full length, by ingrossing them in parchment books ; and the said register or his deputy shall, in the margin of every such entry and inrolment, mention the time of such entry and inrolment, and shall indorse and sign a certificate on such deed, conveyance, or will, in manner, as is by this act directed, where a memorial is entered, and shall safely keep all and every the books, wherein such entries and inrolments shall be made in the said

(a) 8 Geo. 2. c. 6. sect. 22.

“ public office, there to remain upon record; and  
 “ all copies of such entries and inrolments of such  
 “ deeds, writings, wills and conveyances, so re-  
 “ gistered at full length, and which copies shall be  
 “ signed by the said register or his deputy, and  
 “ attested by two or more witnesses, shall be al-  
 “ lowed in all courts of record to be good and suf-  
 “ ficient evidence of such deeds, writings, wills or  
 “ conveyances, so registered and destroyed by fire  
 “ or other accident.”

Can any thing be more unmanly and frivolous, than for the framers of so important an act of parliament, to acknowledge themselves thus publicly sensible of a most material defect in the system of registering, and to point out the remedy, but leave it only optional, as if they were fearful of enjoining and compelling the means, which would be effectually remedial of the evil felt and complained of?

To the end a remedy may be complete, it must be commensurate with the evil. Where then the evil consists in the possibility of a land-owner's suppressing or falsifying his title, the remedy, to be commensurate with the evil, should take away this possibility; which nothing, that is not universally coercive, can effect. By the registering acts, the entering the memorial of a deed is merely voluntary and optional; it neither gives nor takes away validity, it only secures in some cases a priority amongst different incumbrancers.

*The Consequences of a Deed not registered.*

To shew the consequences and effects of these acts in a stronger light, we will suppose that a land-owner in the west-riding of the county of York, having an unincumbered landed property, settles it upon his family and dies. The deed, though not

registered, is to all intents and purposes valid against all mankind, except against a purchaser or mortgagee ; and I suppose none such. His son takes under this settlement an estate in tail male : but finding it not registered, keeps it in his own possession ; sells the land, and dies without issue. His brother is, under the settlement, the next remainder man in tail male. Is it, or should it be determined by law, that the neglect of the settler, which could not afterwards be rectified or supplied, shall have the effect of extinguishing the entail and barring the remainder man, who by the law ought only to be barred by the formality and notoriety of a fine or common recovery ? If so, it would encourage and support the grossest fraud, deceit and imposition. So much I suppose, if the deed creating the entail be not registered.

*The Consequences of a Deed registered.*

If I may be admitted freely to discuss these acts of parliament, it must be allowed, that if a memorial of such a deed be registered according to the directions and in strict compliance with every requisition of the registering acts, the confusion, inconveniency and injustice, which might arise to all parties concerned in it, would be infinitely greater by the registering of it, than if it had not been registered.

My nonprofessional readers will excuse my running into detail, in order the better to expose my reasoning to a conclusive judgment. I will suppose an indenture of three parts made between the landowner of the first part, his intended wife of the second part, and one or more trustees of the third part ; by which he settles his estate on himself and intended wife for life successively, with a provision for younger children, with remainder to the first

first and other sons of the marriage in tail male, remainder to the first and other sons of the settler by any other woman in tail male, remainder to the first and other daughter and daughters of the marriage, remainder to the settler's brother for life, remainder to his first and other son and sons in tail male, remainder to the settler in fee; with powers to the two tenants for life of charging the lands with portions for their younger children, and of jointuring their wives, and with other powers of sale, exchange, leasing, and of revocation and new appointment by the settler. This deed being drawn, a memorial thereof is also prepared and executed at one and the same time with the deed. This memorial, according to the act, is under the hand and seal of the grantor or settler, attested by two witnesses to the execution of the deed of settlement, and the execution thereof is proved by the oath of one of such attesting witnesses. This memorial contains and sets forth the date of the deed, and the exact description of the parties to it, and the names and places of abode of the witnesses to the execution of it by the party, who signs and seals the memorial, and such of the parcels as lie in the district subject to the registry. And when such memorial shall have been entered, and a certificate indorsed upon the deed, mentioning the certain day, hour and time, on which such memorial is so entered and registered, and expressing also in what book, page and number, the same is entered, shall have been signed by the register or his deputy, such indorsed certificate shall be taken and allowed as evidence of the registry in every court of record. Here then is a deed registered in every particular, according to the requisitions of the act of parliament. Let us attend to its effects.

As it is registered according to the act, it is

good and valid against all mankind, even against purchasers and mortgagees, to whom the memorial, as we have seen, is complete notice of any prior incumbrance created by that deed, at least to every one, who has seen or is informed of the memorial. But a person of the most ordinary understanding, will naturally ask, if a memorial ought to be, or in fact *can* be notice of what it does not disclose nor mention. I suppose then an intended purchaser of a part of this estate, upon an advertisement for sale, by the owner (who by the settlement is tenant for life only) searches the register, and finds the above-stated memorial; and from whatever appears upon the face of it, he cannot tell whether it be the memorial of a marriage settlement, an assignment of mortgage, annuity deed, or, in short, what is the nature, purport and effect of the deed. The tenant for life undertakes to sell in fee-simple: the settlement is lost, mislaid, or deposited perhaps with a mortgagee or lender of money, charged under the powers of the settlement itself. And in this latter case, the mortgagee may even in a court of equity refuse to discover his title deeds, upon this ground, that a third person may find out a flaw in them. (a) It is asserted, that the deed in question was merely a settlement of jointure upon the wife, who is dead, and of the land upon the issue male of the marriage, with the immediate reversion in fee to the settler, who never had issue male, but has issue female, viz. three daughters: their provision he further asserts to be the fortune of their mother, vested in the funds. The purchaser completes his purchase of a part of these lands, pays his money, and enters. The father goes abroad, and dies out of the kingdom. One of the daughters pro-

(a) *Senhouse v. Earle*, 2 Vez. 450. *Parrat v. Bellard*, 2 Ch. Ca. 73.—*Ibid* 135. 1 Vern. 27.



cures the original settlement, and they enter upon the purchaser, who certainly cannot maintain his title. For the deed, under which the daughters claim an estate tail, would have been a nullity against the purchaser, if it had not been registered; but having been registered, and he having seen or been informed of the contents of the memorial, it is valid and conclusive against him, and he is presumed in law to have been a purchaser with full notice and knowledge of an estate tail prior to his own title: and this knowledge he is presumed to have acquired through the medium of an act of law, intended undoubtedly to clear, manifest and establish the right and title of the lands, in the purchase of which he has invested his money.

*The Mischief of the registering Acts.*

Innumerable cases within the line of frequent occurrences might be stated, to shew the mischievous consequences and absurdity of these acts. Why does the non-registry of a deed or will render it null and void against a purchaser or mortgagee? But because, if not registered, it is presumed, that the estates and incumbrances created by them may be suppressed from his knowledge, and therefore that his title might afterwards be impeached and defeated by the prior incumbrancer, or taker under the valid deed. Why then should the registering of the deed prevent this effect? But because the purchaser or mortgagee is supposed to take his purchase or security with his eyes open, and with notice from the supposed notoriety of all prior charges by the memorial. And we have seen, that this supposed act of notoriety, does not even mention the consideration of the deed; that is, whether it be a mortgage in fee or for years, whether it be for £. 500 or £. 10,000, whether there  
be



be any limitations or powers of charging, felling, leasing or other powers, or whether there are any shifting uses, clauses or provisos, contained in the deed, to affect the land.

It is uncontrovertibly obvious, that if a deed be intended to convey notice of a prior charge to a purchaser or mortgagee, it must essentially give him certain and complete intelligence, to what extent the deed does actually affect the land : for in purchasing or taking it in mortgage, he takes it liable and subject to all the limitations, trusts, powers, provisos, charges, conditions and covenants contained in the deed ; of which, by the memorial, he is presumed to have notice ; but by which he could not possibly acquire any actual or real knowledge, intelligence, or information of them.

I have hitherto spoken of the knowledge, that is suppressed, or is not disclosed by the memorial ; I must now speak of that, which is acquired by it : and I speak from experience. The mere knowledge of lands having been affected by a deed generally, is an endless source of unanswerable difficulties, doubts and objections, in clearing a title : and every practitioner must often have experienced the truth of what Sir Matthew Hale foretold, long before any of the registering acts were passed (*a*).  
 “ There must be inrolled at least so much of  
 “ the deed or evidence, that concerns, first, parties, grantor and grantee ; secondly, the things  
 “ granted ; thirdly, the estate granted ; fourthly,  
 “ all those parts of the deed or evidence, that  
 “ have any influence upon the estate, as, rent reserved, conditions, powers of revocation, of alteration, of leasing, the trusts, &c. and those

(*a*) The aforesaid treatise of registering deeds and wills, p.

“ other

“ other things, which have an influence upon the  
 “ estate : and without all this done, and truly done,  
 “ the purchaser or lender is as much in the dark as  
 “ before, and cheated under the credit of a public  
 “ office erected to prevent it.”

The registering acts, though well meant, and intended to produce the happiest effects, were unfortunately framed and penned by persons, who must have been grossly ignorant of, or wholly inattentive to the first principles of conveyancing. For the rudest novice in that art should be sensible, that no memorial or entry of a deed could benefit a purchaser or mortgagee, which did not disclose some knowledge of the title to the lands sold or mortgaged ; and that a general confused assurance, that something had been done to affect the land, without any specification of the fact, must ensure an infinity of doubt, suspicion, perplexity and inconvenience, to every purchaser and mortgagee.

*A Registry ought to be a Conservatory of Men's  
 Title Deeds.*

One obvious and very important advantage of deeds being registered and preserved in a public repository, should be the perpetuation of men's titles to their estates, in case of the loss or destruction of their original deeds. It certainly tends much to secure the title to an estate, when such resort may be had to a sure source of information : else why the repository of records in general, of fines and recoveries, of statutes, of bargains and sales, and the probate and preservation of wills ? In the earliest acts of parliament, which have been passed concerning the inrolment of titular documents, &c. we perceive that the legislature entered into the true spirit and intent of such repositories or conservatories, that they might answer the  
 double

double end of notoriety and perpetuation, and manifestation and defence of the owner's right and title to his lands (a). " It is ordained and established, that all the writs of covenants, &c. before that they be drawn out of the common bench by the chirographer, shall be inrolled in a roll, to be of record, for ever to remain in the safe custody of the chief clerk of the common bench and his successors, &c. to the intent that, if the notes in the custody of the chirographer, or the fines be embesiled, a man may have recourse to the said roll, to have execution thereof, as he should have, if the fines were not embesiled, &c."

There can be no reasoning more just, than from parity of circumstances. We see by the 3 & 4 Ed. 6. c. 4. *concerning the grants and gifts by patentees out of letters patent*, that where a " partial sale, transfer, demise or settlement of an estate holden under a grant of the crown by letters patent, is made by the patentee ; any person claiming either immediately under the original grant, or by virtue of any such sale, transfer, demise or settlement, made by the patentee, may, by shewing forth an exemplification or *constat* of the inrolment, or even of so much thereof, as shall serve for the matter in variance, make and convey unto himself title by way of declaration, plaint, avowry, title, bar, or otherwise, against the crown and all other persons ; which exemplifications (or copies) shall be of the same force and effect, as the letters patent."

In the present flourishing state of commerce, and the necessarily consequent circulation of property, estates are constantly undergoing some partial change or affection ; and I see no reason, why

(a) 5 Hen. 4. c. 14.

a purchaser of what has formerly been crown land, should be enabled with more facility, than any other purchaser, to make a good title to the land he purchases. The reason therefore, which induced the legislature, in the year 1549, to make this provision for the security of some purchasers and claimants, is now, in the year 1789, submitted to the nation at large, for extending a similar provision to all purchasers and claimants indiscriminately: and this will be most efficiently done by requiring every deed and will affecting lands to be enrolled, and making office copies of such deeds evidence in all courts of justice.

It certainly is for the mutual advantage of buyer and seller, borrower and lender, that this conservatory should be useful. It cannot be so, if nothing be preserved in it, by which a title can be known, much less perpetuated. This is the end and intent of legal acts being recorded; and such is the effect of enrolling deeds; the nature of which we are now to consider.

### *Of the Inrolment of Deeds by common Law.*

If it be true, as the late Judge Blackstone said (a), that particular customs are a branch of the unwritten (or common) laws of England; but for reasons that have been now long forgotten, particular counties, cities, towns, manors and lordships, were very early indulged with the privilege of abiding by their own customs, in contradistinction to the nation at large; which privilege is confirmed to them by several acts of parliament: if it be an universal usage and custom in every copyhold estate throughout the nation, that every act of alienation is done with notoriety and pub-

(a) Bl. Com. sec. 3. p. 74.

licity within its own manor ; that throughout the manor of Taunton, every deed affecting land be inrolled (a) ; if a deed inrolled within the city of London, acknowledged before the recorder and an alderman, and the woman examined, shall bind as a fine at law, by reason of the custom anciently used ; if the inrolment of deeds in corporate towns be confirmed by the statute of uses (b) ; may we not fairly infer, that it was the ancient usage, custom or law, to make every deed affecting land public and notorious, by inrolment or otherwise.

We read in the 34 and 35 H. 8. c. 22, “ that  
 “ divers doubts, questions and ambiguities, had  
 “ arisen, whether the recoveries and *deeds inrolled*,  
 “ which be in nature of fine, and whereupon wo-  
 “ men covert have been used to be examined,  
 “ taken, had or acknowledged, as well within  
 “ the city of London, as in many other cities,  
 “ boroughs and towns within the realm of Eng-  
 “ land, should bind all such women covert, that  
 “ should happen to be examined upon the same  
 “ recoveries or deeds inrolled.” It is therefore  
 enacted, “ That all recoveries, deeds inrolled, and  
 “ releases heretofore acknowledged and taken, or  
 “ at any time hereafter to be taken and acknow-  
 “ ledged before the mayors, aldermen, recorders,  
 “ chamberlains, or other head officer or officers,  
 “ as well of the city of London, as of any other  
 “ city, borough, or town corporate, within the  
 “ realm of England, having power and authority  
 “ to take and receive the same, according to the  
 “ laudable usages and customs of the said cities,  
 “ boroughs, and towns ; and every of them shall  
 “ be and remain of the like force, strength and  
 “ effect,” &c. as before *this statute*.”

(a) Brook *sais inrolled*, pl. 15.

(b) 27 H. 8.



That the inrolment of deeds was very ancient, appears from many instances in the books. The 27th of H. 8. which requires every bargain and sale of lands for a pecuniary consideration to be inrolled within six months after its date, did not introduce into usage or law the inrolment of deeds; but only enacted, that no such bargain and sale should be valid, unless inrolled within the time before limited. And this provision by the 5th Eliz. c. 26. was extended to the courts of the counties palatine of Chester, Lancaster, and Durham. It is observable, that not one of those statutes says any thing of the acknowledgment of the deed by a party to it, before a judge or magistrate; for it is now generally understood, that the necessity of an acknowledgment *was owing to the common law*, which, as it would not admit the voluntary inrolment of a deed, even for safe custody, *without acknowledgment*, much less would it permit a deed to be inrolled by virtue of this statute, without acknowledgment or something equivalent unto it: from thence it clearly follows, that *inrolment of deeds was by common law*.

In a manuscript report of the case of *Smartle v. Williams*, Pasch. 6 William and Mary, by counsel in the cause (a), it is said the plaintiff, (not having the original deed, which was a mortgage for a term of 500 years) “gave in evidence a copy  
“ of it inrolled in Chancery, upon acknowledg-  
“ ment before a master there; and held, *per Cu-*  
“ *riam*, good evidence, being an acknowledgment  
“ of the party; and no difference between this and  
“ a bargain and sale inrolled: for though the sta-  
“ tute requires inrolment, yet it doth not make  
“ the inrolment more evidence, than in the other  
“ case; and *inrolment of deeds was at common*  
“ *law*.”

(a) Lev. 3. sec. 387.



*Acknowledgment of Deeds by common Law.*

We see as early as in the 21st year of Edward the 3d (*a*), that a woman brought error to reverse the inrolment of a deed of release made by her husband and herself of all her right in certain lands, and assigned for error, that the Court had inrolled the deed by her acknowledgment, who was then covert, whereas they had not power to examine her without writ: and in the (*b*) 44th of the same king, the lord of Tiptoft came into court, to have a deed of feoffment to the lord Walter Huet inrolled; and the Court finding on examination, that livery had not been made, would not permit it to be inrolled till that was done. In this case we even see, that, to the notoriety of livery and seisin, they superadded that of inrolment, where land was passed by deed. In the (*c*) 7th of Edward 4th, one came to Littleton (*d*), and “prayed an obligation might be inrolled: Littleton examined him, as to his knowledge of the contents and his age, telling him, if it was inrolled, he could not deny the deed, or say that he was not of age, or that it was made by duress: but he agreeing to the inrolment, it was “inrolled.” In this instance, the inrolment was not of a deed passing land, but only of a bond, which now the law does not require to be inrolled. And yet a *recognizance* must be inrolled; for the acknowledgment of it before a judge *gives it the force of a record*, though the inrolment of it be necessary for the testification and perpetuating of

(*a*) Br. *faits inrolled*, pl. 3.

(*b*) Br. *ibidem*.

(*c*) Br. *ibid.* pl. 11.

(*d*) It appears, from Dugdale, that Littleton was a judge of the common pleas in the 6th year of Edw<sup>d</sup> the 4th.

it (a). Statutes merchant and of the staple are holden to be effectual against executors without inrolment : but against purchasers of the conusor's land, they are not of force, unless inrolled within three months from their date. (b) And Lord Coke, 2 Inst. 673, says, " A deed acknowledged by husband and wife  
 " shall *by the common law be inrolled* only for  
 " him, and if inrolled for both it binds her not ;"  
 and gives the reason before mentioned, " that  
 " none have power to examine her without writ."

I think I need say nothing more to prove, that the common law of this country authorises and warrants the inrolment of deeds. There cannot, however, be any higher authority to prove this position, than an act of parliament passed in the 6th year of Richard II. c. 4. which is above four hundred years ago, viz. in the year 1382. This statute enacts, that all deeds inrolled, which had been destroyed in the then late insurrection, being exemplified, should have the force and effect of the originals. It is to be observed, that the statute speaks of a general usage and custom, not of a rare scarce practice ; it says, *all inrolments of deeds and other muniments inrolled in any of the four courts of record* ; in some of which, it is more than probable, that the greatest part, if not all deeds affecting the titles of lands were in those days inrolled.

It would admit of much argument, though of no important consequence, to discuss the point, whether the common law did or did not require the inrolment of every deed, and how, in process of time, this requisition became relaxed, or the usage dispensed with. It is sufficiently evident, from the instances adduced, that the principles and reasons, upon which the common law either re-

(a) Hob. 196. Hall v. Winchfield.

(b) Went. of Executors, 159.

quired or allowed of the inrolment of deeds, are such as evince, in the present day, the necessary exigency of an universal inrolment.

*Of the Inrolment of Deeds by Statute.*

Sir M. Hale says, that (a) “ it was the great design of the statute of 27th H. 8, to have brought about that method of assurance ; and if it had been pursued, it had before this time been brought to great perfection, and done much of that good, which is now intended by it.”

We have already said so much about this statute, that it will be useless to repeat the reasons of its having passed into a law, or of the effects of that law.

*Effects of inrolling Deeds.*

There are some effects to be found in the books produced by the inrolment of deeds, which I have not as yet noticed ; for instance, (b) “ a deed to lead the uses of a fine of the estate of the wife ; the master of the Rolls was against admitting a copy of the inrolment, and made a distinction that the inrolment of a *bargain and sale (by statute)* is a record, but a deed for safe custody might be said to be recorded : yet on an issue directed by lord keeper, the chief justice admitted it in evidence.” And in the before-mentioned case of *Smartle v. Williams*, (3 Lev. 387) on a trial at bar, “ a copy of a mortgage-deed” (which was not a bargain and sale according to the statute) “ was admitted, and the Court said the acknowledgment binds the party and all claiming under him.”

(a) Sir M. Hale’s tract on the benefit of registering deeds, p. 36.

(b) 2 Vern. 471. 591.

I cannot here forbear repeating an observation, which I before made, that the subject of these sheets had never been thoroughly investigated, maturely considered, nor settled in any regular consistency. From the precedents that I have quoted, it not only appears, that a copy of a bargain and sale inrolled according to the statute of Henry VIII. but even of any other deed inrolled, whether for safe custody or otherwise, may be produced in evidence: but if this were such positive and certain law, whence then arose the necessity of passing the before-mentioned act of the sixth of Richard II. for if office copies were evidence of deeds inrolled, why needed they to be exemplified under the great seal to make them evidence? And again, much nearer to our own days, the following part of the tenth of Queen Ann, c. 18. sec. 3. must either prove the law to be otherwise, or it is perfectly useless and redundant: “ and for supplying a failure in pleading or deriving the title to lands, “ tenements or hereditaments, conveyed by deeds “ of bargain and sale, indented and inrolled according to the statute made in the twenty-seventh “ year of the reign of King Henry VIII. for inrolment of bargains and sales, where the original “ indentures of bargain and sale to be shewed forth “ or produced, are wanting, which often happens, “ especially where divers lands, tenements or hereditaments are comprized in the same indenture, “ and afterwards derived to several persons: Be it “ further enacted by the authority aforesaid, that “ wherein any declaration, avowry, bar, replication “ or other pleading whatsoever, any such indenture “ of bargain and sale inrolled, shall be pleaded “ with a *profert in curia*, or offer to produce the “ same, the person or persons so pleading, shall “ and may produce and shew forth, and be suffered and allowed to produce and shew forth,

G 2

“ by

“ by the authority of this act, to answer such *pro-*  
 “ *fert*, as well against her Majesty, her heirs and  
 “ successors, as against any other person or persons,  
 “ a copy of the inrolment of such bargain and  
 “ sale, and such copy examined with the inrol-  
 “ ment, and signed by the proper officer, having  
 “ the custody of such inrolment, and proved upon  
 “ oath to be a true copy, so examined and signed,  
 “ shall be of the same force and effect, to all in-  
 “ tents and constructions of law, as the said in-  
 “ dentures of bargain and sale were and should  
 “ be of, if the same were in such case produced.  
 “ and shewn forth.”

To follow up the observation; we must not forget that it is holden, that *the acknowledgment binds the party acknowledging, and all claiming under him*: and yet it is said in (a) *Taylor v. Jones*, “ If two  
 “ are parties to a deed, and one acknowledges it  
 “ before a judge, it binds the other; and if a  
 “ man lives in New England, and would pass land  
 “ here, they join a nominal party with him in the  
 “ deed, who acknowledges, and it binds.” Now,  
 if we do but reflect one moment upon the reason,  
 nature and effect of an inrolment, we shall find,  
 that *the acknowledgment, which* is the warrant to  
 the officer to inrol the deed, is nothing more nor  
 less, than an avowal by the granting party, that  
 the deed which he has executed is his own act and  
 deed; and that he thus solemnly desires it may be  
 from thenceforth rendered notorious, and perpe-  
 tuated as a record of the court, for the purpose  
 of manifesting, maintaining and establishing the  
 title. Now, what can so strongly insult common  
 sense (and what else should all law and equity  
 spring from or be reduced to) as to be taught,

(a) 1 Salk. 270.



that the (a) *inrolment of a deed is to no other purpose, but that the party shall not deny it afterwards*; and that the acknowledgment of a mere nominal party, who in fact is neither grantor nor grantee, *shall bind*, and make the inrolment valid: for to what good, or even mischievous purpose shall a mere nominal party deny a deed?

Again it is holden, (b) *that against a deed inrolled, a man may plead infancy, although none can plead non est factum*; and yet why should the acknowledgment by a mere nominal party, or by a grantee, prevent the grantor, (whom I suppose totally ignorant of the acknowledgment and subsequent inrolment) from pleading *non est factum*, after such inrolment, more than if the deed had not been inrolled? After such glaring inconsistencies, it would be too absurd to deny, that the law ought to be amended and improved.

Before I entirely quit this subject, it will not be improper to call the attention of my readers to the inattention and ignorance of parliament concerning the law of inrolment. The 21st Jam. I. c. 26, after reciting, "that many lewd persons of base condition, used to acknowledge deeds in the name of others, not privy nor consenting to the same, which hath and daily doth turn to the great charge, trouble and undoing of many of the good subjects of this kingdom, and rather for that there is no remedy in law to reform these and the like abuses;" enacts, "That all person or persons acknowledging or procuring to be acknowledged, any deed or deeds inrolled in the name of any other person or persons not privy or consenting to the same, and being thereof lawfully convicted or attainted, shall be

(a) Viner. Inrolm. E. 3, pag. 445.

(b) 2 Lev. 65. Sir W. Pelham's case.



“ adjudged, esteemed, and taken to be felons,  
 “ and suffer the pains of death,” &c. Now if,  
 as we have seen, the acknowledgment binds the  
 acknowledging party and all claiming under him,  
 and the inrolment binds only, when the deed hath  
 been acknowledged, (even by a nominal party)  
 I beg to be informed, what mischievous effects can  
 be produced by the acknowledgment of a deed in  
 the name of another *person not privy nor consenting*  
*to the same*: for it is evident, that such person is a  
 stranger to the deed, as well as to the inrolment of  
 it, and therefore utterly incapable of giving or tak-  
 ing away its validity and effect. It is then certain,  
 that the framers of this act, neither attended to  
 nor understood the nature, operation and effects of  
 acknowledging and inrolling deeds, &c. &c.

*Of the Inrolment of Roman Catholics Deeds.*

The next time the legislature thought proper to  
 interfere or pass any law concerning the inrolment  
 of deeds, was upon the spur of the times; to  
 answer a particular purpose, and produce a parti-  
 cular effect. This was to render notorious and  
 public every act and deed, by which a catholic  
 passed, altered or changed his landed property.  
 For, by the 3d Geo. I. c. 18, it is enacted, “ That  
 “ from and after the twenty-ninth day of Septem-  
 “ ber in the year 1717, no manors, lands, tenements,  
 “ hereditaments, or any interest therein, or rent or  
 “ profit thereout, shall pass, alter or change from  
 “ any papist or person professing the popish reli-  
 “ gion, by any deed or will, except such deed  
 “ within six months after the date, and such will  
 “ within six months after the death of the testator,  
 “ be inrolled in one of the king’s courts of record  
 “ at Westminster, or else within the same county  
 “ or counties wherein the manors, lands and tene-  
 “ ments

“ ments lie, by the custos rotulorum and two  
 “ justices of the peace, and the clerk of the peace  
 “ of the same county or counties, or two of them  
 “ at the least, whereof the clerk of the peace to  
 “ be one.” An act almost annually passes, for *allowing further time for inrolment of deeds and wills made by papists, and for the relief of protestant purchasers.* As this act of Geo. I. is of much utility and importance in the prosecution of my present researches, I shall premise some general observations upon its nature, tendency and operation, before I enter into the legal effects of it, with respect to the law of inrolment.

This is one of the many penal laws now in force against the Roman catholic subjects of this country. It is a *penal* law, because it was intended to impose a burthen upon the professors of that religion, to which their fellow subjects were not liable ; and to deter them in future from offences, of which they were then presumed guilty.

It is obvious, that before a man can give title to another, he must have a title himself: *Nemo dat, quod non habet.* A man cannot have land himself, if he be by law incapacitated *to have or to hold it.* By our laws, there are but two methods of acquiring landed property in this country : one by descent, when the law casts the inheritance upon the heir at law, after the death of the ancestor ; the other by purchase, which includes every acquisition of land under a gift, deed or will. Now when this act of the 3d Geo. I. passed, the legislature could not, or at least ought not, to have been ignorant of the 11th and 12th of William III. c. 4, by which every person educated in the popish religion, or professing the same, is absolutely “ *disabled and made incapable to inherit or take by descent, devise, or limitation in possession, reversion or remainder,* “ *any lands, tenements or hereditaments within the*  
 G 4 kingdom

“ kingdom of England, dominion of Wales, and  
 “ town of Berwick upon Tweed, and is also *dis-*  
 “ *abled and made incapable to purchase either in his*  
 “ *or her own name, or in the name of any other per-*  
 “ *son or persons, to his or her use, or in trust for him*  
 “ *or her, any manors, lands or profits out of lands,*  
 “ *tenements, rents, terms or hereditaments,* within  
 “ the kingdom of England, dominion of Wales,  
 “ and town of Berwick upon Tweed, and that  
 “ *all and singular estates, terms, and any other*  
 “ *interests and profits whatsoever out of lands,*  
 “ from and after the said 10th day of April  
 “ (viz. 1700) *made, suffered or done to or for the*  
 “ *use or behoof of any such person or persons, or upon*  
 “ *any trust or confidence mediately or immediately to or*  
 “ *for the benefit or relief of any such person or persons,*  
 “ *shall be utterly void and of none effect to all intents,*  
 “ *constructions and purposes whatsoever.”*

Can words be more obvious, explicit, and conclusive? If then a person educated in or professing the Roman catholic religion, can neither take land by descent nor purchase, he cannot take it at all: if he cannot take, he cannot hold; for *prius est habere quàm tenere*. An alien may take land by purchase: but he cannot hold it, but for the benefit of the crown. If he cannot have, he cannot give. How absurd and repugnant then is it to enact, that no deed nor devise of land by a Roman catholic, shall be good and valid, unless inrolled within six months: for the consequence evidently is, *therefore, if so inrolled, it shall be good and valid*. That this was the intent and sense of the legislature is sufficiently clear, from the constant usage of inrolling all such deeds and wills, which have often been controverted and established as valid in the courts of law and equity.

If this act of 3d Geo. I. can operate at all, it must be by virtually repealing the 11th and 12th of Wil. and the fires in London, in the year 1780, were

were very flagrant proofs, that the 11th and 12th of Wil. III. till that time was generally understood to be unrepealed and in full force. In the case of *Pelham and Fletcher* (a), “ a Papist assigned to a  
 “ protestant for a full consideration : an ejectment  
 “ was brought against the assignee by a subsequent  
 “ mortgagee, who recovered by the disability of  
 “ the first mortgagee. (b) All this appeared upon a  
 “ bill brought in Chancery ; and my lord chancellor was of opinion, that *a mortgage to a papist is*  
 “ *void* (c). But in this case, the assignment to  
 “ the protestant, and the trial in ejectment, were  
 “ both before the 3d of Geo. I.” (that is, the statute for inrolling the deeds of Papists) “ which  
 “ were it otherwise, would it seems have made  
 “ an alteration.” And what other alteration, but by removing the disability of the papist, and consequently virtually repealing the 11th and 12th Wil. III. by which the disability was created.

*The Inconsistency of these two penal Laws.*

If we take a complex view of these two acts, the representation will be faithfully this : A papist, who, by the act of Wil. can neither take land by *descent nor purchase*, may, by the act of Geo. I. give or devise it away by deed or will inrolled. What can more efficiently do away every effect of the statute of Wil. III. than the 3d of Geo. I. and all the subsequent acts, by which the lands possessed by Catholics are subjected to a double landtax, and to a registry, and are almost annually affected by the act for *allowing further time for inrolment of deeds and wills made by papists, and for the relief of protestant purchasers* ?

(a) 3 New Abr. 709, Michaelmas 1729.

(b) For being, as a papist, disabled to take the land himself, he could not assign it to another.

(c) *Viner recusant*, 263.

It is self-evident, that lands which are possessed by a Catholic, must have been taken by the possessor, either by descent or purchase ; for there is no other mode of taking lands : and by the act of Wil. III. he is made absolutely *incapable of taking lands by descent or purchase*. Either therefore the act of Geo. I. with every subsequent annual act relative to the same subject, is an absolute nullity, as grounded upon an impossible supposition, viz. *that a Catholic could take land by descent or purchase, since the passing of the act of Wil. III.* or these latter acts completely do away the effects of the act of Wil. III. by enabling papists to take land by descent or purchase. And I put these questions impartially to every man. Did the Roman Catholics obtain any relief by the repeal of that part of King William's act ? In what could that relief consist, but in acquiring a capacity, which they had not before, of taking lands by descent or purchase ? It is one amidst many striking instances of the blind and inconsiderate judgment of the public, when we throw our eyes back to the ferments and riots, that set London in a blaze in the year 1780, merely because the legislature had repealed in express words, what had in fact been virtually repealed from the year 1717. For by this act of repeal passed in the 20th year of his present Majesty, a Roman Catholic may now take land by descent or purchase, which he may settle, charge, mortgage, sell or give away by deed or will inrolled : and by the 3d Geo. I. he was enabled to settle, charge, mortgage, sell or give away his land, by deed or will inrolled ; which he could not do without taking the land : what then can a Roman Catholic do more under the express repeal of that part of King William's act by the 20th of his present Majesty, than he before could under the virtual repeal of it by the 3d Geo. I. ?

The inconsistencies of these penal statutes run to  
an



an extent exceeding all credibility. For will any man suppose it possible, that the wisdom of the British legislature should declare in the same spirit and intention, and by written laws, meant to subsist and be enforced together, and with a view and express reference to each other (*a*), that a papist not having taken a particular oath prescribed by the 30th of Charles II. is rendered absolutely incapable of taking land by descent or purchase (*b*): and that every papist shall take this very oath at the age of twenty-one years or within six months after his coming *into possession of any lands or rents out of lands*, or shall register the estate *into the possession of which he has come* in the manner specified in the act, under the penalty of forfeiting the fee-simple thereof; two thirds to the king, and one third to the informer? Can folly and absurdity be more glaring? First to require an oath to be taken at the age of eighteen, and then to annex the incapacity of taking the land to the noncompliance with that requisition; and afterwards to require the same oath to be taken at the age of twenty-one, or six months after a person comes into possession of *what he cannot take*; and to annex the forfeiture of that very land, *which he cannot take*, to the king and informer, for his neglecting to register the same after *he has taken it*.

*Inconveniences of the 3d of Geo. I.*

The act requires every deed and will to be inrolled within six months from the date thereof, but makes no provision for either a deed or will executed out of the nation, which frequently cannot by possibility be inrolled within the time limited: it directs the deed to be inrolled, yet it neither expresses whether it shall be inrolled by acknowledg-

(*a*) 11 & 12th Wil. 3d.

(*b*) 3 Geo. 1st.



ment or *fiat*, or whether a copy of the inrolment shall be admitted in evidence. If effect were to be given to the act of Wil. III. by really incapacitating a Roman Catholic from taking lands by descent or purchase; these latter considerations could not affect them: but they are of infinite consequence to protestant purchasers; for supposing, that under a deed or will executed by a catholic owner of land at Bengal, a Protestant should become intitled, to the prejudice of the heir at law; would it not be a hard case on one hand, that an heir at law should be disinherited by an instrument, which under an express act of parliament is null and void; and on the other hand, that a purchaser should be defeated in his rights, for the omission of a condition imposed by act of parliament, which it was impossible to perform?

*Unconstitutional Hardship of the Third of George the First.*

An unprecedented hardship attends this act, which must upon consideration appear wholly unconstitutional; for by it a man is compelled by a public act recorded in court, to avow and confess himself guilty of a crime, which draws upon him the very extreme rigor of the law, in the penalties of premunire, outlawry, felony and treason; to which every one knows, that the profession of the Roman catholic religion subjects its votaries. The very acknowledgment of the necessity of inrolling a deed under this statute is *ipso facto* an avowal of a person's being a Roman Catholic. Let us hear the language and doctrine of our courts upon this matter (a): "A bill was brought, praying, " that defendant might discover whether I. S.

(a) 3 New. Abr. 799. Trin. 12th G. 2. Smith v. Read.

" (under

“ (under whose will the defendant claimed) was a  
 “ papist or not. The defendant pleaded the statute  
 “ of the eleventh and twelfth William III. and the  
 “ Lord Chancellor was of opinion, that he was not  
 “ obliged to discover; that there is no rule better  
 “ established, than, *that a man shall not be obliged*  
 “ *to answer, to what may subject him to the penalty*  
 “ *of an act of parliament*, and there can be no doubt,  
 “ but this is a penal law inflicting disabilities or  
 “ incapacities. If a bill is brought against the  
 “ person for discovery, whether he is a Papist or  
 “ not, he is not bound to discover; and where is  
 “ the difference between him and the person claim-  
 “ ing under him? Besides, what sways with me  
 “ very much is the great inconvenience that would  
 “ follow, should this plea be disallowed; we should  
 “ have nothing in this court but bills of discovery,  
 “ whether such and such persons were Papists or  
 “ not, and nobody knows what confusion would  
 “ follow, therefore the plea must be allowed.” Is  
 it not strange, that whilst the courts held such  
 doctrine, the legislature should contrive, by a side  
 wind and indirect compulsion, to force a *man to*  
*answer to what may subject him to the penalty of an*  
*act of parliament?* And *there is no doubt but this is*  
*a penal law.*

#### *Further Inconveniences of the 3d of George I.*

Besides the inconsistencies and hardships of the  
 act, a very important inconveniency must ever cer-  
 tainly attend the execution of it. It certainly  
 passed to the end (as the preamble expresses it)  
*that the estates of Papists may be certainly known and*  
*discovered.* Should not then the act have pre-  
 scribed some method of ascertaining this crime of  
 popery, which renders a person incapable of taking  
 land by descent or purchase; or which requires the  
 enrolment of all their deeds and wills, and have  
 determined

determined a time (at least after the deaths of the parties) after which, the proof of this incapacity or requisition should be precluded? It will be readily admitted, that the legislature, by *making known and discovered the estates of Papists*, and by passing annual acts for the relief of protestant purchasers, never could have meant or intended to render the titles of Papists (if a person unable to take land by descent or purchase can have title) to their lands *dubious and uncertain*. And it is clear to demonstration, that every title must be dubious and uncertain, which depends upon a condition or requisition, the necessity of which is created by statute, but of which no legal evidence can be procured or produced.

*A supposed Case before the Repeal of any Part of the Act of King William III.*

A conveyancer knows, that by one act of parliament a Papist is incapacitated to take land either by descent or purchase; and that by another act, no deed nor will affecting land made by a Papist is good, unless inrolled within six months. An abstract of a title is brought to him to peruse on behalf of a purchaser of a Papist's land. The first thing to be attended to is, how this fact (which is the stigma guilt or crime of popery) can be proved or established; for upon that, the whole title hinges. The omission to inrol some leading deed is stated. How shall a man after his death be proved not to have conformed to the established church, or to have dissented from it? And yet if a person educated in or professing the popish religion, be incapable of taking by descent or purchase, (and consequently of transmitting, limiting, or selling); or if the act of William be rendered a nullity, by the virtual repeal of the 3d Geo. I. or if it lose its efficacy from its own absurdity or inconsistency,

consistency, or from the presumption and tacit agreement of the nation collectively and individually; or if the deed or will of a Papist (who in spite of that act may have taken an estate by descent or purchase) be without enrolment an absolute nullity; how can such a title be approved of? And if doubted, how can the ambiguity be done away? For the conformity or nonconformity with the established church in this case creates the capacity or incapacity to take, and the obligation or nonobligation to enrol; upon which depends the validity or nullity of the deed, and consequently that of the title.

It is a subject of astonishment, notwithstanding the gross, palpable and pointed contradiction of these acts, how catholic landed property has been preserved in the very few, who still profess the tenets of that belief; and still more, how titles to mortgagees and purchasers have been daily made out, deduced through, and from persons labouring under the first of all defects in a title, viz. an absolute incapacity to take land either by descent or purchase.

*Unintended Effects of repealing a Part of King William's Act.*

We are more to commend the liberality, than admire the wisdom of the parliament, which repealed that part of the act of King William, that disabled a Roman Catholic to take land by descent or purchase. In resolving to remove the incapacity, they had not the precaution to provide against the inconsistencies, which must necessarily attend a partial alteration of the law. There cannot be a doubt, but that the 3d of George I. is and was intended to be a penal law, and a hardship imposed upon the Roman Catholics; for the preamble states the reason of its passing, viz. "in order that  
" they

“ they may be deterred (if possible) from the like “ offences for the future.” It is well known, that the inrolment of deeds is attended with an expence for additional stamps, for entering them on the rolls, and for the fees of office; another reason, why such deeds and wills by Catholics are inrolled was and is “ to render public and notorious the “ *estates of papists*.” Behold now the perversion of all these ends! A Protestant purchases land from a Papist, (and (a) now a Papist can take by descent or purchase, and therefore may sell :) the purchase deed is to be inrolled; the expence of a purchase deed, without a special contrary agreement, is always upon the purchaser; the Protestant then pays the expences, and the Protestant’s estate is rendered public and notorious; and thus whatever hardship, expence or inconveniency, was intended to be imposed upon the Roman Catholic, is in fact transferred from him to the Protestant: and at present, as a Roman Catholic may legally purchase, the deed, by which the Protestant conveys the land to him, needs not to be inrolled; and the Catholic may take under such a deed, either without any such expence or notoriety of title, to which the protestant purchaser is subject.

*Experimental Effects of the 3d of George I.*

In whatever light we view this statute, there appear the most cogent reasons for repealing it. It has however produced some effects, which form an experiment, how an universal inrolment act would tend to simplify and improve the law.

If we may be permitted to drop the ideas of incongruity and contradiction, which I have before mentioned, result from the statutes first disabling, then virtually enabling Papists to take land, and



lastly qualifying and admitting their possession and seisin; we may argue from their possessing, passing and changing their lands from the year 1717 to the present day, in the same manner, as if the 11th and 12th of William had in fact never been made. In this supposition, the title of a Roman Catholic to his land is ever more sure, clear and certain from that period, than the title of a Protestant; and the statute gives the obvious reasons for it, viz. the Catholic's estate is thereby (a) *certainly known and discovered*; and for this reason have their lands in several instances borne a higher price in the market, than those of their neighbours; nor will this be found unreasonable, when we reflect, that the establishment of a registry with all its imperfections and inconveniences, certainly raises the value of land in the counties of York and Middlesex above the rate, at which land of a similar quality, will sell at in a neighbouring county, and secure a preference in landed securities given for money in those counties over others. The truth of this daily appears from the advertisements for sales and loans in the newspapers.

The necessary inference from these premises is, that by how much more clear the title of a landowner is to his estate, of so much more value is it to a purchaser: and by how much more readily he can raise money upon it, of so much more value is it to himself. The prices of land and of the funds must always keep pace with each other, and by them the prosperity and credit of the nation may be always ascertained. The disabling part of the 11th and 12th of William is now expressly repealed by the 20th of his present Majesty; but till that had been done, it was whimsically unaccountable to reflect, that one statute, enacted as a penal

(a) Preamble of 1st Geo. I. c. 2.



law against the Roman Catholics, should have been in practice and in fact wholly disregarded, and another most strictly observed. For few, if any, persons ever thought of giving force to the act of William, or of neglecting the requisition of 3d of George I. (a).

*The Decisions of the Courts upon the Act of King William.*

Having said so much of the inconsistency and repugnancy of the two acts of Will. III. and Geo. I. it behoves me to prove my positions, by shewing the decisions of the courts upon them. I do it with that submission and deference, which is due to the authority of our supreme courts: it must be remembered at the same time, that these decisions are, upon that part of an act, which is now repealed; and I quote them, with a view and intention of proving, that another act ought to be repealed.

He, who runs, may read the intent and meaning of the 4th section of 11th and 12th Will. III. c. 4.  
 “ And be it also further enacted, by the authority  
 “ aforesaid, that from and after the nine and twenty  
 “ tieth day of September, which shall be in the year  
 “ of our Lord one thousand seven hundred, if any  
 “ person educated in the popish religion, or professing  
 “ the same, shall not, within six months, after he or she  
 “ shall attain the age of eighteen years, take the oaths of  
 “ allegiance and supremacy, and also subscribe the declaration  
 “ set down and expressed in an act of parliament made in the  
 “ thirtieth year of the reign of the late King

(a) I find this observation sanctioned by Bishop Burnet, in the History of his own Time, Vol. II. p. 229; where, after setting forth the inconsistent severity of this act, he concludes in these words, “ So this act was not followed nor executed in any sort.”

“ Charles

“ Charles II. intituled, *An act for the more effectual*  
 “ *preserving the king's person and government, by*  
 “ *disabling Papists from sitting in either house of*  
 “ *parliament*, to be by him or her made, repeated  
 “ and subscribed in the courts of Chancery or  
 “ King's Bench, or quarter sessions of the county,  
 “ where such person shall reside, every such person  
 “ shall, in respect of him or herself only, and not  
 “ to or in respect of any of his or her heirs or po-  
 “ sterity, be disabled and made incapable to inhe-  
 “ rit, or take by descent, devise or limitation, in  
 “ possession, reversion or remainder, any lands, te-  
 “ nements or hereditaments within the kingdom  
 “ of England, dominion of Wales, or town of Ber-  
 “ wick upon Tweed : And that during the life of  
 “ such person, or until he or she do take the said  
 “ oaths, and make, repeat, and subscribe the said  
 “ declaration in manner as aforesaid, the next of  
 “ his or her kindred, which shall be a Protestant,  
 “ shall have and enjoy the said lands, tenements  
 “ and hereditaments, without being accountable  
 “ for the profits by him or her received during  
 “ such enjoyment thereof, as aforesaid : but in case  
 “ of any wilful waste committed on the said lands,  
 “ tenements or hereditaments, by the person so  
 “ having or enjoying the same, or any other by  
 “ his or her licence or authority, the party disabled,  
 “ his or her executors and administrators, shall  
 “ and may recover treble damages for the same,  
 “ against the person committing such waste, his or  
 “ her executors or administrators, by action of debt  
 “ in any of his Majesty's courts of record at West-  
 “ minster ; and that from and after the tenth day  
 “ of April, which shall be in the year of our Lord  
 “ one thousand seven hundred, every Papist or  
 “ person making profession of the popish religion  
 “ shall be disabled, and is hereby made incapable  
 “ to purchase either in his or her own name, or in

“ the name of any other person or persons to his  
 “ or her use, or in trust for him or her, any manors,  
 “ lands, profits out of lands, tenements, rents,  
 “ terms or hereditaments, within the kingdom of  
 “ England, dominion of Wales, and town of Ber-  
 “ wick upon Tweed; and that all and singular  
 “ estates, terms, and any other interests or profits  
 “ whatsoever out of lands, from and after the said  
 “ tenth day of April, to be made, suffered or done  
 “ to or for the use or behoof of any such person  
 “ or persons, or upon any trust or confidence, me-  
 “ diately or immediately, to or for the benefit or  
 “ relief of any such person or persons, shall be ut-  
 “ terly void and of none effect, to all intents, con-  
 “ structions and purposes whatsoever.”

In confirmation of the obvious meaning and in-  
 tent of this statute, which indubitably was to hin-  
 der Roman Catholics from taking or possessing  
 landed property, it has been solemnly determined  
 (a), that “ the persons who were eighteen years  
 “ old at the time of making the statute of Wil-  
 “ liam III. are within the intent and meaning,  
 “ though out of the letter of the act; for it is re-  
 “ markable, that this clause extends only to the case,  
 “ where the papist is under the age of eighteen  
 “ years at the time, that the lands come to him;  
 “ but where the papist is above eighteen years of  
 “ age when the land comes to him, he is utterly  
 “ disabled to take, and the estate is void ” (b).  
 “ Devise to a papist, is a purchase within this  
 “ act ” (c): and it is settled, “ that either a de-  
 “ vise or settlement to a person professing the po-  
 “ pish religion of above eighteen years and six  
 “ months of age, is *void*, and the person not capa-

(a) 9 Mod. 35. Trin. 9. G. Carrick v. Errington.

(b) Wm. Rep. 254. Trin. 1717. Vane v. Fletcher.

(c) 9 Mod. 170. Roper v. Ratcliffe, in the House of Lords.

“ ble of taking: the act intending utterly to disable  
 “ the papist of that age to take any new acqui-  
 “ sition, *or what was not his ancient inheritance*” (a).  
 The statute extends to trusts as well as legal estates,  
 and to a term of years, or even for six months, as  
 well as to a freehold or an inheritance, and “ the  
 “ trust of a term is as much within the act as the  
 “ legal interest of a term (b).”

It appears, that these decisions upon the incapacity of a papist acquiring any land by purchase either under a deed or will, are strictly consonant with the words, spirit and meaning of the act: but what judgment are we to form of the decisions made upon the other words of the act, *be disabled and made incapable to inherit, or take by descent, devise or limitation in possession, reversion or remainder any lands, &c.*? The singularity of these decisions will scarcely be credited.

To inherit or take by descent is certainly to take by operation of law, and not by the act of the party (c). “ Lord Dover being possessed of a  
 “ long term for years, made his will, and his lady,  
 “ who was a papist, executrix thereof. And it was  
 “ resolved by Lord Chancellor, that notwithstanding  
 “ the disabling act of the 11th and 12th of  
 “ Will. III. the term vested absolutely in her; and  
 “ this was not a purchase within that act. And  
 “ he said, that a papist may be a tenant in dower  
 “ or by the curtesy; because, in all these cases, it  
 “ is by *operation of law, and not by the act of the*  
 “ *party*, that the estate comes to him.” It requires some slight knowledge of the law to perceive the distinction between an executor taking a chattel interest (such as is a term of years) as executor, and a person’s taking the same interest under

(a) 2 Wm. Rep. 4, 5.

(b) 9 Mod. 192.

(c) 3 New Ab. 799. case of Lord Dover’s Will, and Vin.  
 title Papist.

a devise or deed. Whatever a man inherits or takes by descent, must be a freehold and inheritance, not a chattel interest or term for years. In a statute so highly penal, the Court very humanely and liberally in this instance, (if I may be allowed the expression) invented this evasion of the severity of the law: but why it should not adhere to the spirit of the law, and go beyond its strict letter, in this instance, as well as it did in declaring that persons of eighteen years and a half old at the time of the making of the statute, were within the intent and meaning, though out of the letter of the law, I cannot command ingenuity enough to account for. Common sense tells us, that the intent and meaning of the act was certainly to prevent a papist from acquiring any interest even for one year in land: and shall it be seriously presumed, that a protestant, possessed of a leasehold estate worth £.50,000, shall by law be enabled to leave that to a papist, by making him executor, which he cannot give or leave him by deed or specific devise? When a particular object is intended to be accomplished by the legislature, it is derogatory from its dignity, that the courts of law should invent and countenance such subterfuges and evasions of its intended effects. The virtual repeal of the 11th and 12th of Will. III. by the 3d Geo. I. and its express repeal by the 20th of his present Majesty justify this language.

The reason alledged for this determination, viz. that *it is by operation of law, and not by any act of the party, that the estate comes to him*, every body must perceive, applies most emphatically to every descent cast by law, and would therefore do away the first and chief part of this very statute, which disables a papist *to inherit or take by descent, devise or limitation*; for it is by operation of law, and not by any act of the party, that an estate

comes



comes to an heir, who takes by descent, to a devisee, who takes under a will, and to a purchaser who takes by limitation under a deed.

But the subsequent decisions upon these words of the act, *be disabled and made incapable to take by descent, devise or limitation*, are still more wonderful, than those, which we have already quoted (a). "The heir at law, though a Papist, is *capable to take the inheritance*; for it is in him, though the next Protestant of kin hath the pernaney of the profits, till the other becomes a Protestant; nor shall the next remainder-man take immediately, till after the death of the Papist." Be it observed, how inconsistent and contradictory are the foregoing and the subsequent determinations (b): "Per Cur. 9 Mod. 34. Trin. 9. G. in the case of *Carrick v. Errington* cited there, as settled in the case of the Dukes of *Hamilton*;" Lord Chancellor King held, "That the remainder should take effect presently, in the same manner, as if a remainder were limited to a monk for life, or to one that refuses to take, or if such remainder-man had been dead, and no such limitation had been."

I will end my observations upon this statute, and the decisions upon it, with the following repetition: *That the statute extends to trusts as well as legal estates*. Now observe with astonishment how the courts judge of this matter (c). Per Pratt, Ch. Justice, "If Papists take conveyances to their own trustees, and if it be undiscovered, all is well; or if it be discovered, the conveyance, it is true, is void by the act; but then it reverts again in the first owner or trustees." I cannot

(a) 9 Mod. 34 Trin. 9 Geo. *Carrick v. Errington*, and *Roper and Ratcliff*, ubi supra.

(b) 2 Wm. Rep. 362. Trin. 1726, *Carrick v. Errington*.

(c) 9 Mod. 194. *Roper v. Ratcliff*.



discover any words in the act, which either implicitly or explicitly import, that the disability of a Papist taking a trust estate, depends upon the discovery of its being a popish trust. The *non-discovery* of the *cestuy que trust*, certainly never can give validity to a conveyance, which was void *ab initio*; nor can there be a re-vesting, without a divesting: and nothing can divest by a conveyance, but what thereby moves out of the grantor: but here the conveyance was void, and therefore no effect can be given to it; and consequently nothing could thereby have moved out of the grantor. Again (a), “the act of 11th and 12th Will. III. is a bare  
“disability; it creates only a disability, but makes  
“no forfeiture; it prevents a vesting, but divests  
“nothing that is vested.”

Another curious doctrine has been established by the courts, which appears upon reflection equally incompatible with the statute, which incapacitates a papist to *inherit or take land by descent, devise or limitation*.

(b) “The word *purchase* in this statute is only  
“a modification of the estate, and shall not be  
“taken in the full extent of the word; for those  
“purchases are intended only by the statute, by  
“which papists enlarge and extend their landed  
“interest, and not where by deeds of settlement,  
“the ancient family estate is new modelled, without making any new acquisition; so that even  
“at this day, a purchase by *limitation* in a settlement, or by devise to a papist under the age of  
“eighteen years, is good, so as such papist, within  
“six months after he comes to that age, conform  
“and take the oaths, &c, otherwise he loses the  
“permanency of the profits during his life only.”

(a) 9 Mod. 199. 200.

(b) 9 Mod. 180. Hil. 5 G. 1. Earl of Derwentwater's case.

The inconsistencies of this act and of the decisions upon it, will appear less strange, when we attend to the account which Bishop Burnet gives of its passing. (a) “ Those who brought this into the House of Commons, hoped, that the court would have opposed it; but the court promoted the bill; so when the party saw their mistake, they seemed willing to let the bill fall; and when that could not be done, they clogged it with many severe and some unreasonable clauses, hoping that the lords would not pass the act; and it was said, that if the lords should make the least alteration in it, they in the House of Commons, who had set it on, were resolved to let it lie on their table, when it should be sent back to them. Many lords, who secretly favoured papists, on the Jacobite account, did for this very reason move for several alterations; some of these importing a greater severity; but the zeal against popery was such in that house, that the bill passed without any amendment, and it had the royal assent.”

*Of Inrolling Deeds by a Judge's Fiat.*

Before I leave this subject, I shall slightly touch upon a point of practice, which has attended the execution of this act of the 3d George I. It has been the general usage to enrol all deeds under this act, not by acknowledgment of the execution by any of the parties to the deed, but by what is called a judge's *fiat*; (a) which in general is a

(a) History of his own Time, 2d vol. p. 229.

(b) The Fiat is nothing more, than the signature of a judge to the following superscription on the face of the deed. *Let this deed be inrolled in the court of*      *pursuant to the statute, this*      *day of*      *178*      *A. B.*

short

short order or warrant of some judge, for making out and allowing an certain process, &c.

I have not been able to trace in the books the faintest idea of a deed being inrolled under a judge's *fiat*; such however has been the general practice, which must appear truly surprizing, when we throw back our recollection, to what is said (in page 79 viz.) that *the necessity of an acknowledgment was owing to the common law*, which as it would not admit of the voluntary inrolment of a deed, even for safe custody, without acknowledgment, much less would it permit a deed to be inrolled by virtue of a statute without acknowledgment, or something equivalent unto it. It cannot be questioned whether less formality and authority be required for the voluntary inrolment of a deed for safe custody, or for the requisite inrolment of a deed under a compulsory statute. Upon what ground of authority then did the judges introduce and continue to issue these *fiats* for inrolment? It would be too hazardous to assert, that out of many thousand deeds inrolled under *fiats*, not one is validly inrolled.

We have seen, that the *acknowledgment* of a deed to be inrolled under the statute of Henry VIII. is previously requisite for its inrolment, not by virtue of that statute, but of the common law, for the act says nothing of acknowledgment; so the statute of George I. is equally silent as to the mode of inrolment. Either then a judge hath power to issue a warrant for inrolment by *fiat*, or he has not. If he hath power, it must be either by the prerogative of his office, or by written law. There is no mention made in any statute, which hath come under my cognizance, of a judge's *fiat* for this purpose. If it be by common law or prerogative of office, it is paramount to the statute of Henry VIII. but before that statute, there was not known any distinction of inrolled deeds; that statute required the

the inrolment of a particular species of deed ; but the mode of inrolling that particular species, did not vary from the mode of inrolling any other species of deed. The act directed no variation in this mode. The same reasoning holds to the present day. The common law cannot be altered, but by an express statute ; the judge's prerogative or power not having been extended or curtailed, as to any particular species of deed, it is one and the same over all. Upon what ground then, do they assume a power to issue *fiats* for inrolling deeds of Roman Catholics under the statute of George I. which they disavow and disclaim for inrolling bargains and sales under the statute of Henry VIII. If this power arises by the common law, and the common law has never been altered by statute, the judges certainly have equal power in both cases. If they can issue a *fiat* for inrolling a deed in one, they can in every instance. For what is the inrolment of a deed ? It is the act of a deed becoming either recorded in court, or a record of the court, according to what has been said above ; when it has been entered or ingrossed upon a roll or scroll of parchment, such ingrossed copy shall not be recorded in the court, but by some warrant of a judge of the court, in which it is intended to be inrolled. This warrant is said in the books to be the acknowledgment of the deed, to which the judge signs his name : (a) but as the deed cannot be entered or recorded in the court without a judge's name, so I must presume, that every deed, to which a judge has signed his name by way of direction, order, warrant, authority, consent or knowledge for

(a) The form of an acknowledgment is—*The execution of this deed was acknowledged by A. B. a party thereto before me, and was by him desired to be inrolled in the court of*

A. B.

its

its inrolment, must after that, necessarily be entered or admitted as a record, by the officers of the court. They are bound by the judge's orders, which are to them mandatory and compulsive; the party, which is bound to procure the deed to be inrolled, can do no more, than to procure from a judge a direction, warrant, authority or order to the officer, to inrol the deed: the nature and mode of this direction, warrant, authority or order, must be immaterial to the officer and party; the latter is bound to comply with the requisition of the statute, which obliges him to inrol the deed, and the former will not, as he ought not, record any deed without the sanction of a judge's name; and wherever a judge's direction, warrant, authority or order appears upon a deed, the officer cannot refuse to record it, unless for a reason paramount to the authority of a judge, viz. for a parliamentary reason; such for instance as is the want of a proper stamp. In such case, although a deed be acknowledged or hath a *fiat*, yet if it be not properly stamped for inrolment, the officer will refuse to inrol it; yet if he should have recorded it, I know of no provision in any act relative to the subject, which invalidates the deed, after it hath been once recorded, or that makes the deficiency of stamps prevent its becoming a record of the court. For stamps are imposed by acts of parliament; nothing therefore relative thereunto can alter the common law, but by express words. (a) "Statutes are not presumed to make any alteration in the common law, further or otherwise, than the act does expressly declare." The nature of the deed remains, as it was at common law, which was paramount and independant of the duty upon stamps.

(a) 11 Mod. 150.



Upon full and mature consideration of this subject, I cannot help concluding my opinion, that if a judge do sign a *fiat* for the inrolment of a bargain and sale, which is required to be inrolled by the act of Henry VIII. and it be ingrossed upon proper stamps; and after that, it be recorded in the court, it hath answered the intent of the statute, which requires it to be inrolled. When I say thus much, I am also of opinion that in no case a judge should ever sign a *fiat* for inrolment, without the acknowledgment of that party to the deed, whose execution of it gives it efficacy and effect. (a) In the case of *Abfolom* and *Anderton*, the acknowledgment was by the bargainors, viz. the masters and chaplains of the Savoy, before a master in Chancery, who went down for the purpose to their chapter house: so that if the parties had been common persons, every thing was perfectly right; but it being the case of a body corporate, who cannot do solemn acts by parole, nor otherwise than under their common seal; a question arose upon the validity of the inrolment. And it was agreed, *that the indenture being once inrolled, it was not material by what means, but was good being done.*

When it is considered, that the copy of any inrolment may be read in evidence, and that a deed ought not to be inrolled without the acknowledgment of a party to it, and that an acknowledgment binds the acknowledging party, and all claiming under him; when we also reflect that an acknowledgment of a deed, is but an avowal by the party, that the deed to be inrolled is his own act and deed, and that it is his wish and desire, that it be rendered notorious and perpetuated; I flatter myself, that it will be the conclusion of all my readers, that the inventions and devises of introducing nominal par-

(a) 3 Lev. 84.



ties to acknowledge deeds, and signing *fiats* for their inrolment, are but evasions or perversions of the real intent and purpose of inrolling deeds; and that consequently therefore, one fixt, consistent and effectual mode of inrolling deeds by the acknowledgment of the granting or operating party to the deed, ought to be established, as it is provided for in the draft of the bill annexed *hereunto*.

Nothing can so solidly confirm the doctrine I have attempted to establish, as to consider the effects produced by the inrolment. For it hath been holden, (a) that until the deed be inrolled, the estate and freehold is in the bargainor, and nothing passes from him. So in *Billingham's* case; "bargainee before inrolment, bargains and sells to another, and afterwards the first deed is inrolled, and after that the second: yet held, that nothing passed, for he had not any estate in him at the time of the bargain and sale to give to a stranger." As therefore the transfer of the land is the act of the bargainor, and the acknowledgment and inrolment of the indenture is but the continuation and completion of that act of transfer, it certainly ought to be done by the bargainor. And for this obvious reason was it said by *Dyer*, that a bargainor is estopped by the inrolment from pleading either nonage or duress, or any matter, which disproves the deed and destroys it.

### *Of the Inrolment of Wills.*

Whatever objections might be raised against inrolling every deed affecting land; yet confident I am, that the reasons, which I am about to adduce, will prove the indispensable necessity of inrolling all wills and devises of land, in order to render them

(a) Moore 42.

†

notorious,

notorious, public, perpetual and authentic. It is no small satisfaction to find my opinion supported by so great a man as Sir Matthew Hale. (a) "It were well, if some greater solemnity were required by law in wills, whereby lands are devised: for ever since the statute of 34 Hen. 8. more questions, not only of law, touching the constructions of wills, but also of facts, arise, than in any five general titles or concerns of lands besides." To see and perfectly comprehend the law, nothing is so effectual, as to trace it to its origin: to acquire an intuitive knowledge of an effect, we should not be ignorant of the cause.

The power, which individuals in this country have been permitted to enjoy, of disposing of their possessions even after death, seems *always* to have extended without interruption to personal property: such as is money, goods, chattels, &c. but as to land, although the like power existed, and was exercised by our Saxon ancestors, yet from the Norman conquest, to the days of Henry VIII. this power had ceased or run into desuetude, and existed no longer, but by private custom in some manors, boroughs and corporations.

The inconveniency of lands not being deviseable was at length felt in a commercial country; and by the 32d Hen. VIII. c. 1. every one was enabled to devise all his lands holden in soccage, and two third parts of his lands holden by knights service: and by 12 Car. II. c. 35. sec. 1. all tenures are turned into free and common soccage; so that at present all lands whatsoever are deviseable by statute.

Notwithstanding this act of Henry VIII. enabling individuals to devise their lands in the manner before mentioned; we find that in the days of Car. II.

(a) The before-mentioned pamphlet upon a general registry.  
when

when after the then late revolution and troubles, the nation began to enjoy peace and quiet, and commanded some cool leisure to look forwards towards quieting and settling their titles to their possessions, (for at that time almost every man stood in absolute need of it); they passed, *an act for the prevention of frauds and perjuries*, commonly called the statute of frauds: (a) and amongst other remedies administered by that act, was that of adding “ greater  
 “ solemnity and notoriety to the publication of all  
 “ devises and bequests of any lands or tenements,  
 “ deviseable either by force of the statute of wills,  
 “ or by this statute, or by force of the custom of  
 “ Kent or the custom of any borough or any other  
 “ particular custom, which (from the 24th June  
 “ 1676) it was enacted, should be in writing,  
 “ and signed by the party so devising the same, or  
 “ by some other person in his presence, or by his  
 “ express directions, and should be attested and  
 “ subscribed in the presence of, and by his express  
 “ direction, and should be attested and subscribed  
 “ in the presence of the said devisor by three or  
 “ four credible witnesses, or else they should be  
 “ utterly void and of none effect.” And the act provided also for the same degree of notoriety and publicity in cancelling, altering and revoking such devises and bequests; and for the *amendment of the law in that particular*, enacted; that from thenceforth, “ any estate *pour autre vie* should be devise-  
 “ able by a will in writing, signed by the party so  
 “ devising the same, or by some other person in his  
 “ presence, and by his express directions attested  
 “ and subscribed in the presence of the devisor, by  
 “ three or more witnesses,” &c.

Whoever reflects one moment upon these par-

(a) 29 Car. 2. c. 3.

liamentary provisions for the additional solemnity and publicity of landed devises, more than in wills of personal property, cannot hesitate to conclude, that there is more reason also for such wills being perpetuated and preserved open to inspection, than the wills of personal property. A will moreover, by which land is devised, forms the most material part of the title to the land devised; and in every alienation or charge or settlement of it, it will ever be proper to trace and prove the title, at least for sixty years back. Nothing of this, is applicable to the bequest of personal goods and chattels.

*Of the Spiritual or Ecclesiastical Courts.*

It is foreign from my purpose to trace and account for the introduction of any legal jurisdiction or tribunal into this country, which is not governed and regulated by the municipal law of the land. For in fact, the civil law (by which is meant the Roman or Justinian code) is as foreign and distinct from the municipal law of this country, as the Talmud or the Coran.

At a time, when the clergy had monopolized all literature and knowledge, it was an easy matter for them to extend that superiority, together with what their spiritual character and functions gave them, over generations more docile in faith and pliant to credulity, than the present, to a dominion, sway or influence over the temporalities of their flocks. From the right, which the ordinaries acquired to distribute and apply the personal goods of intestates *pro salute animarum defunctorum* according to the doctrine of those days, that the persons, who had the charge and care of men's souls in their lifetime, were the most proper to see to the application of their property after death, many abuses gradually crept into this authority and power.

Such ever has been, and such ever will be the case, where the spiritual power assumes, or even receives any temporal jurisdiction. For if any spiritual authority does exist, it is in its nature essentially distinct from and independant of all human institution : and from the instant, that it raises itself upon any other basis, than that of the divine gift or mission, it perverts its origin and institution, and becomes of course much more liable, from an heterogeneous principle, to all sorts of abuses, than if it were a mere temporal power or jurisdiction.

*How the Right of Administration probably came to the Ordinary.*

It is no uncommon thing at the close of life, that a person repenting of his sins, may from a just principle of restitution or reparation, wish to have a certain sum of money applied in a secret manner, in order to avoid scandal or disgrace ; and in those countries, where auricular confession is in use (as it then was in England) such applications are usually left to be made by the spiritual director of the penitent, who may probably have suggested the propriety, or insisted upon the necessity of them. It is also frequent (amongst those, who hold, that there is in the next life a place of temporary punishment, where we are purified from our slighter failings, which have not deserved the eternal torments of hell, and that the prayers and intercessions of the living are an inducement to the mercy of Almighty God, to alleviate and abbreviate their pains and punishments) to make donations to particular churches and particular persons, in order that certain sacrifices and prayers may be offered up to Almighty God with this view, for the repose of their souls :



souls: as we read in the books of the Macca-bees (a). “ He making a gathering sent 12000  
 “ drachms of silver to Jerusalem, to have sacrifice  
 “ offered for the sins of the dead, well and right-  
 “ eously thinking of the resurrection: for unless  
 “ he hoped, that they who were slain, should rise  
 “ again, it would seem superfluous and vain to  
 “ pray for the dead. It is therefore a holy and  
 “ healthful cogitation to pray for the dead, that  
 “ they may be loosed from their sins.” Thus as in  
 those days, (viz. 200 years before the coming of  
 Christ) the money, which was thought proper to  
 be applied to this purpose, was sent to the priests  
 of the temple, so probably was it, in latter times,  
 deposited in like manner with the priests of the new  
 law: and so by degrees, not only that part of the  
 property of the deceased, which was devoted to  
 these purposes, was often vested in the ordinary,  
 but the whole personal estate became vested in him,  
 with an expressed or implied injunction and obliga-  
 tion of applying the residue or remainder (if any)  
 unto or amongst the relations of the deceased.  
 This appears to me to have been the original spirit  
 and intention of the ordinary’s power in this re-  
 spect. But a mixture of spiritual and temporal  
 power will never blend properly together.

It is very evident, that abuses of this right and  
 power crept in at a very early period: for in the  
 year 1285 (b) the legislature takes notice, that  
 “ whereas after the death of a person dying in-  
 “ testate and in debt to several, *the goods come to*  
 “ *the ordinary to be disposed* (behold here the usage,

(a) 2 Mac. XII. 43. Although these books are holden to  
 be apocrypha, yet they are read in the church of England  
*for example of life and instruction of manners* (Art. IV.) which  
 would not be, if they did not contain true and authentic  
 history.

(b) 13 Ed. 1. c. 19.

into which the abuse had crept, and then follows the remedy) “ the ordinary from henceforth shall  
 “ be bound to answer the debts, as far forth as the  
 “ goods of the dead will extend, in the same man-  
 “ ner as his executors would have been bounden,  
 “ if he had made a will.”

*The Spiritual Courts had not the original Cognizance  
 of Wills.*

By the ancient British laws, the probate and jurisdiction of wills did originally (as it always ought) belong to the temporal courts: for we find in Glanvill, the earliest writer and most authentic quoter of the common law (*a*), that there is a writ, which lies at common law, to recover a legacy. And in the register there appears to be a writ *de rationabili parte*. It was about the time of Richard the 3d, that wills were proved in the spiritual courts (*b*). In all other nations they are proved in the temporal courts. And in many places in England, even at this day, the lords of manors have the probate of wills (*c*): and Tremayle, who was then king’s serjeant, told the Court, that he was steward of several manors in his county, where both freehold and copyhold tenants proved their wills before him in the courts baron; which particular customs were (as before observed) a retention or relict of the ancient general law or usage. Linwood, who was dean of the Arches, and wrote about the time of Hen. VI. doth confess, that the probate of wills did belong to the ordinaries, *non de communi jure*, but by custom. And archbishop Parker published a book in 1573, in which he says

(*a*) Lib. 6. c. 6, 7.

(*b*) Fitz. Testam. 4.

(*c*) Nelson *lex Testamentaria*, p. 462. Hensloe’s case, 9 Rep. 38.

*nec ullam habebant episcopi auctoritatem, præter eam quam a rege acceptam referebant; testamenta probandi auctoritatem non habebant, nec administrationis potestatem cuique delegare non poterant (a).*

Anciently (b), upon the death of an intestate, the son was intitled to have the heriots due to him, which were appointed by law, that by the lord's advice or judgment *the intestate's goods be divided amongst his wife and children and the next of kin, according as to every one of them of right belongs.* And it appears clearly conclusive from the words of the laws of Edw. the Confessor, that the ordinary in those days, had nothing to do with the administration or distribution of goods of the intestate (c). *Habeant hæredes ejus pecuniam et terram ejus sine aliquâ diminutione, et rectè dividant inter se*; for if this right of the heir to the goods and land had not been under the usual temporal jurisdiction of the common law, it would certainly have been mentioned to be under some other jurisdiction. And Mr. Selden says expressly, “ that  
“ until King John's time, it seems the jurisdiction over the intestate's goods, was as of other  
“ inheritances also, in the temporal courts; yet no  
“ sufficient testimony is found to prove it expressly:  
“ only when the common laws of those times speak  
“ of intestates, they determined the succession by  
“ like division, as those of the Saxon times. In  
“ certain laws attributed to Will. the First (d),  
“ we read, *Si homo mourust sans devise, si departent les infants, levitè inter se per ovell.* And after, in  
“ Henry I. laws (e), *Si quis baronum vel hominum*

(a) Lambert, fol. 167. Selden, fol. 184.

(b) Canut. leg. c. 68, & Selden of the disposition or administration of intestates goods, p. 15.

(c) Leg. Ed. Conf. cap. de Heretoch. of Croland.

(d) MS. in the Cotton lib. attributed to Ingulph.

(e) Matthew Paris.

“ *meorum præventus, vel armis vel infirmitate, pecu-*  
 “ *niam suam nec aederit, nec dare disposuerit, uxor*  
 “ *sua sive liberi aut parentes et legitimi homines sui*  
 “ *pro animâ ejus eam dividant, sicut eis melius visum*  
 “ *fuerit.* Here is the first mention, as I remem-  
 “ ber, of any thing occurring in our laws, or his-  
 “ tories of the dispositions of the intestate’s goods,  
 “ *pro animâ ejus* : which indeed might have been  
 “ fitly subjected to the view at least of the church.  
 “ But no mention as yet of any ecclesiastical power,  
 “ that tends that way ; I rather think, that there-  
 “ fore no use or practice was of administration  
 “ committed, direction given, or meddling with  
 “ the goods by the ordinaries : but all was by  
 “ friends or kindred, *juxta consilium discretorum vi-*  
 “ *rorum, &c.*

“ Neither doth that of Glanvill, which was writ-  
 “ ten under Henry II. tell us of any thing of the  
 “ ordinaries power in this case, although it hath  
 “ express mention of testaments, and the churches  
 “ jurisdiction of them : indeed we there find (a) that  
 “ if no executor be named, then *possunt propinqui*  
 “ *et consanguinei testatoris* take upon them the  
 “ executorship, and sue in the king’s court against  
 “ such, as hinder the due payment of legacies,  
 “ which also agrees well enough with that before  
 “ cited out of the laws of Henry I.”

The first interference of the church, in the ap-  
 plication of the goods of intestates, that I can  
 trace, is in the charter granted or made by King  
 John in the 17th year of his reign, at Runnymede (b) : *Si quis liber homo intestatus decesserit,*  
*catalla sua per manus propinquorum parentum et ami-*  
*corum suorum per visum ecclesiæ distribuantur, salvois*

(a) Glanv. lib. 7. cap. 6.

(b) In a MS. preserved by Matt. Par. Roger of Wendover, and Tho. Rudman.

*uni cuique debitis, quæ defunctus eis debebat.* These words *per visum ecclesiæ* cannot in any manner import a judicial or any other power in the church : they seem to import a sort of testimony, or notoriety only of its being done in the face of the church, or before the ordinary, as it is said in writs of summons *per visum proborum legalium hominum*, or as Mr. Selden understands it, *by the direction and advice of the ordinary.*

We are to observe, that by this charter the administration and distribution of the goods of the intestate were directed to be made only by the next of kin and the friends of the deceased, *per manus propinquorum parentum et amicorum suorum* : and yet very soon afterwards we may trace the interference of the ordinaries gaining gradual ground towards that absolute dominion, power and authority, which they afterwards exercised without controul. For we read in Bracton, who was a judge in the reign of Henry 3d (a), “ *Si liber homo intestatus et subito decesserit, dominus suus nil intromittat de bonis defuncti, nisi de hoc tantum quod ad ipsum pertinuerit (scilicet quod habeat suum heriott) sed ad ecclesiam et amicos pertinebit executio bonorum.*”

The ordinaries, soon after they had acquired this joint power with the next of kin, soon found means to exclude the latter from any participation whatsoever in the administration and distribution of the goods of intestates : for in the 42d year of the reign of the said King Henry the 3d, we read of an article granted in the synod of London (b) : “ *Idem quod mortuo laico sine testamento, non capiantur bona ipsius in manus dominorum. Sed inde solvantur debita ipsius, et residua in usus filiorum, servo-*

(a) Bracton, lib. 2. de acq. rer. dom. c. 26, sect. 2.

(b) In annal. Bartomensis con. pernes. V. cl. Thorm. Allen Oxon. MS. A. 1257.



“ *rum et proximorum indigentium, pro salute animæ defuncti, in pios usûs per ordinarios committantur, nisi quatenûs fuerit domino suo obligatus.*” It is curious to observe the gradation of this usurped or acquired power of the ordinaries; first, as we have seen, they were called in as witnesses or consulted as advisers; then they became joint executors or administrators; then sole administrators and distributors of the goods of the intestates: but still the *pious uses*, to which they pretended to apply them, were the payment of debts and the succour and relief of the children and needy relations of the deceased. Nor did the abuses of this usurped power cease, till the ordinaries had acquired an arbitrary and discretionary right or authority of distributing and disposing of all the goods of the intestates. The different gradations of this usurped power are the clearest proofs of its introduction and establishment, upon the decline and abolition of the ancient laws and customs of the realm.

*Lands were formerly deviseable.*

It appears both from records and history, that in the days of our Saxon ancestors, goods (or personal estate) as well as lands passed by descent; and the lord of the fee was in the place of a judge, to see upon the death of any of his tenants, that there should be an equality in the distribution, as well of the goods, as of the lands amongst the children and next of kin: for if there were children, they excluded all the kindred of a more remote degree, and therefore the rule was, *Si liberi non sunt, proximus gradus in possessione fratres, patru, avunculi, &c.*

The custom of Gavel Kind, which was retained all through Kent, and subsists even to this day in some parts of that county, is nothing more, than a  
relict

relict of the ancient common law, according to that, *Si quis intestatus obierit, liberi ejus hæreditatem æqualiter dividant* (a).

This also clearly proves the ancient law of devising land; for intestacy is not spoken of, where there is not a custom or usage of willing.

*The Norman Feudal System incompatible with the Power of devising Lands, &c.*

When William the Norman found it political to change the landed tenures of the kingdom, and introduce a more rigorous form or mode of the feudal system, it annihilated at once the power of devising lands; for a feud was at first no more, than a right, which the vassal had to take the profits of his lord's lands, rendering unto him such feudal duties and services, as belong to military tenure; so that the tenant had only the use of the land, and the property still continued in the lord. These feuds were originally holden only at the will of the lord, but afterwards were continued to the tenant during his life; in either of which cases, they could not be disposed of by will, for a will is the actual disposition of a right or interest, which survives the testator. Feuds, in process of time, became hereditary and perpetual, and even then the personal services and duties, which the feudal tenant was bound to pay to his lord, were of such a nature, as essentially precluded the power of disposing of the feud by will; for there were certain profits of *ward* and *marriage*, which became due to the lord, if the heir was under age, at the death of the tenant; and if of full age, the land fell into the lord, who became entitled to *relief*; the payment of which *relief* was in the nature of a new purchase,

(a) Lambert fo. 167, & Selden fo. 184.

or a price paid to the lord for the land. The feudal tenants were bound moreover to the defence of their lord's person in the field, and to attend and give him their advice and counsel once at least in three weeks in his courts. Strength of body and ability of mind were therefore requisite, to render these services properly and duly to the lord. And in this system, it certainly was reasonable, that the lord should have the education of the heir, that he might instruct, educate and form him so, as to be capable of rendering the due services of the feud to the lord. It was therefore incompatible with the feudal principle, that any man should be empowered by will to disinherit the heir, and so preclude the lord from his beneficial chances of *ward*, *marriage* and *relief*, and deprive him by an impotent substitute of the civil and military services, to which by tenure he was entitled. Besides, (says Baron Gilbert), (a) " this way of conveyance " wanted that solemnity, which the feudists thought " necessary to establish in transferring lands; and " if at any time a dispute should arise, it might " be the easier determined by the *pares comitatus*, " who were witnesses to that notorious and public " manner of conveying by livery; and, for that " reason, I believe copyhold land was taken to be " out of the statute of 3<sup>d</sup> Henry VIII. For their " surrender which is required, as well in devises as " in other alienations, answers the notoriety of livery and seisin, and consequently out of the reasons of the prohibition of the feudal law. Thus " the law continued till the invention of uses, " which were first found out by the clergy, to " evade the statutes of mortmain." We have already said so much of the 3<sup>d</sup> of Henry VIII. that it will be unnecessary to say more of it at present.

(a) Gilbert's Law of Devises, p. 9.

*Of the different Modes of inrolling Deeds in the different Courts.*

Although I have made extensive searches amongst the records of the different courts, yet I do not claim the pretension of having searched so minutely, as to give a strict and accurate account of every deed there recorded; the result of my searches has however more and more convinced me of the necessity of a regular and uniform mode of issuing warrants for inrolling deeds and wills. By considering minutely the different sorts of warrants, by virtue of which, deeds and wills are now usually entered upon the rolls, and thereby become recorded in court, we shall be enabled to judge and determine, what sort of warrants ought only to be issued for that purpose.

We have before considered the original intent and meaning of a party acknowledging a deed, and the effects produced by that acknowledgment; and I appeal to the judgment of those, who have really considered them, whether any other method besides that of acknowledgment, can by possibility answer the ends, for which deeds are inrolled. The inrolling act of Henry VIII. is compulsive upon all persons, who grant land by bargain and sale for a pecuniary consideration. The inrolling act of Geo. I. is compulsive upon all Catholics, who affect their lands by deed or will. The time limited by both acts for inrolling such deeds, is six lunar months from their date or delivery. Upon their inrolment or non-inrolment within that space of time, absolutely depends their validity or nullity. And according to every idea of common sense and plain reason, the act, by which the deed acquires its validity, and the omission, by which it becomes a nullity, ought to rest with that party to the deed,

4

whose

whose execution of it gives it effect; and upon this principle, it is generally said, that the grantor should always acknowledge the deed. Nothing can more plainly speak this general presumption or opinion, than the provisions in the aforesaid registering acts, for the inrolment of bargains and sales in the registry of the respective riding of the county of York, where the lands comprised in the deed lie. These acts require, as a previous requisite to the inrolment of any such deed, that the grantor shall acknowledge it before two justices of the peace of that riding; presuming, that if the deed had been inrolled in a court of record, it would have been acknowledged before one of the judges of the court by the grantor, as, in my humble opinion, it ought to be. For I again repeat my opinion, that no deed whatsoever ought to be inrolled, till it has been acknowledged by the party, whose execution of it gives its effect, before such authority, as can thereupon issue a warrant to the officers of the court to inrol it.

I have before said much of the nature of *fiats*, under which many of the Roman catholic deeds are inrolled. But then this sort of warrant seems to have been generally confined to such deeds, unless in some few instances they have been issued for inrolling deeds *pro salva custodiâ*. It should appear *ex vi termini*, that deeds so inrolled were kept or deposited in some custody, which is not the case. And yet it is said in Salkeld, (a) that “*at common law*,” there was “an inrolment *pro salva custodiâ*,” and it appears from what I have said before, viz. that, as the court would not admit of a voluntary inrolment, without the acknowledgment of the party, much less would they inrol a deed under a coercive statute without it; and

(a) Salk. 348.

therefore



therefore, when such voluntary inrolments were made, the deeds were usually acknowledged previously by the party. It often happens, that persons wishing to secure and perpetuate the memory of deeds, after the parties to them are dead, have applied to the judges of the court for a warrant to the officer to inrol them; and after the deaths of the parties, (as in wills) what other warrant can be issued than a *fiat*? And it may be fairly presumed, that wherever a *fiat* has been issued for inrolling such a deed, when the granting or operating party to it was living, it has been the presumption and supposition of the judge, who signed the *fiat*, that the party was dead, or otherwise, that he would have come to acknowledge his own act and deed, if he wished it to be inrolled and recorded.

From the effects produced by the inrolment of a deed, it must be allowed, that there is a very material difference between a deed inrolled, and a deed not inrolled; and it would be highly unreasonable, that this difference should be made to depend upon the act of an utter stranger to the deed: for either the *fiat* is signed by the judge, without any question or examination into the reason, motive or pretensions of the person, who presents the warrant for signing; or it is signed upon the affidavit of an attesting witness to the sealing and delivery of the deed, by one of the parties to it. In both these cases, the deed may come to be recorded in court, without the intention, and even against the wish of the grantor; and if we reflect, that the inrolment is but the completion of the act of transfer, as was before observed, the absurdity of its being completed without the privity or against the wish of the grantor, will appear in its true colours.

The court of Chancery very frequently, and the court of King's Bench in some instances, has adopted another method of inrolling bargains and sales, viz.  
by

by the affidavit of an attesting witness to the execution of the deed; and although I cannot even invent a solid and substantial reason for their so doing, yet must it be allowed, that they have the sanction of authority for it; and so much cannot be said in favour of *fiats*. It is said (a) “*that a deed may be inrolled without the examination of the party, upon proof by witnesses, that the party delivered it.*” And (b) “*party died before acknowledgment, yet the deed was inrolled.*”

To reduce this subject to some consistent degree of reason and regularity, we must allow, that no deed whatsoever should be inrolled, without the acknowledgment of the granting or efficient party to the deed, if he be living; and as it may often happen, that not only by death, but even by sickness, business and inconveniency, a person may be prevented or hindered from appearing personally before a judge or magistrates, to acknowledge a deed; yet may he always at the same time execute a special warrant of attorney, which should be annexed unto or indorsed upon, or even included in the deed, to empower some proper person to acknowledge the execution of it on his or her behalf, before a judge or magistrates, and to desire that it may be inrolled in a proper court. Such a practice is not only warrantable upon the general principle of all powers of attorney, *qui facit per alium, facit per se*; but also more especially upon another axiom, that *qui potest majus, potest & minus*. For if a person can legally depute another to seal and deliver a deed for him, he certainly may empower him to acknowledge his own execution. But this is a matter so plain and simple, that I shall neither quote authorities, nor say any thing more upon the subject.

(a) Godb. 270.

(b) 3 Leon 84.

Points of practice are often the strongest evidence of points of law; and nothing more forcibly proves, that the law intended, and in fact presumes, that all deeds inrolled are or ought to be acknowledged, than the titles, which are prefixed to the inrolments of each term, in every one of the four different courts of record; which invariably run, *cognita et inrolata*, that is acknowledged and inrolled, &c. whence it is a just inference, that none, but such as are acknowledged, are supposed to be inrolled.

*The Objections against the Notoriety of Deeds and Wills affecting Lands.*

The grand, and indeed the only objection, which ever hath been raised against the notoriety of deeds and wills affecting lands is, that thereby family secrets and transactions may be laid open and divulged; but this will soon vanish, when we reflect, that every will of personal property must be proved in the spiritual court; under the seal of which, letters testamentary are granted, by which the executor is enabled to maintain an action; and that a will once proved, is deposited as a public and notorious act of the party, to which all persons, but more especially the next of kin (who in case of an intestacy would have been intitled to the personal estate of the deceased) may have recourse, and know without being driven to the expence and trouble of a suit or action, upon what ground, and in what manner they are deprived of those rights, which the law would have cast upon them, if the deceased had not counteracted its effects by a will. I have never known any inconveniency arise from such publication and notoriety of wills: on the contrary, I believe there are few persons, who have ever been concerned in the wills  
of

of their relations or friends, who have not reason to rejoice and approve of their being thus regularly deposited, and open to public inspection.

If then in the bequest of personal goods and chattels, the title to which is ever more simple and obvious than to land, this notoriety is required by law, how much more requisite is it, when an heir at law is either wholly or partially disinherited, or made liable and subjected to a temporary or permanent incumbrance, or is cramped and limited in his inheritance, that the instrument should be published and recorded, so as to be open to public inspection and consideration, without action at law or suit in equity! For it is undeniable, that all muniments and titles to land, and emphatically such as go to interrupt the legal course of inheritance, should be matters of publicity, notoriety and perpetuity.

As the power of devising lands, guardianships, &c. was either given or received by statute, the wills, by which they are devised, are not subjected to the spiritual court, in *which alone* a public entry of wills is made. (a) Where “a guardianship of a child is devised by will, it shall not be proved in the spiritual court, because it being a power given by the statute, it properly belongs to the courts at Westminster to determine, whether the devise was made pursuant to the statute, and therefore like wills, by which lands are devised, it is usually proved by witnesses in Chancery.” But such probate in Chancery is not compulsory; it is no copy, and therefore no record of the will; nor does it operate any other effect, than the perpetuation of the testimony of the witnesses to the execution of the will by the devisor. It rarely happens, that devises of land are made by

(a) 1 Vent. 207.

wills, which do not dispose of some personal estate : the quere then arises, when the land devised is the principal object of the testament, shall it, or shall it not be adjudged by the spiritual court? Now what can be more absurd and inconsistent, than, that an instrument, by which property is disposed of in this country, shall be liable to a decision by two separate, distinct and contrary laws? For such in fact are the Roman law, by which the ecclesiastical courts judge; and the English law, which determines the decisions of our courts of law and equity. (a) Libel in the spiritual court, “to prove  
 “a will, the defendant suggested for a prohibition, that in the will there were lands and legacies devised, and that the testator was *non compos mentis*; but the prohibition was denied, because the statute of Hen. VIII. never intended  
 “to diminish the jurisdiction of the spiritual court, as to probates; and it might be very inconvenient to stay the probate in this case, because  
 “whilst it is stayed, the executor cannot sue for debts; and by that means they may be lost, and  
 “the will not performed; and it would be to no purpose to grant a prohibition as to the lands,  
 “because as to them the probate is *coram non judice*, and cannot be given in evidence in any  
 “court of law.”

Who does not see the extremity of folly, in obliging devisees in general to enter and prove wills passing lands in a court, which hath not, nor can have any cognizance or jurisdiction over them. Independent of the useless expence, it is highly derogatory from the dignity and respect due to our national jurisprudence. (b) “Where a will  
 “is made of lands and goods, the temporal courts

(a) Partridge v. Cave, 2 Salk. 553.

(b) Netter v. Brett, W. Jones 355. Cr. Car. 391. 395.



“ will not prohibit it to be proved in the spiritual  
 “ court. ’Tis true, this was against the opinion of  
 “ Justice Croke, because the land being the prin-  
 “ cipal, the spiritual court had no authority in such  
 “ case. And that it would be inconvenient if they  
 “ should; for the sentence given in that court  
 “ might have some influence upon any suit, which  
 “ might happen in the temporal courts concerning  
 “ the land. (a) And it is said elsewhere, that a  
 “ will of lands ought not to be proved in the spi-  
 “ ritual court.” From thence and the like cases,  
 we see the inconveniency and incongruity of the  
 present law of devises of lands, and the urgent ne-  
 cessity of publishing and perpetuating all wills and  
 codicils in any manner affecting them; for by  
 them, titles are weakened or confirmed, heirs at law  
 disinherited, purchasers and mortgagees strength-  
 ened or shaken in their purchases or securities, and  
 all persons claiming right under the devisor, most  
 materially affected. Every end of notoriety and  
 perpetuity will be answered by inrolling wills affect-  
 ing lands, in the like manner, as wills of personalty  
 are now entered for weaker reasons, in the spiritual  
 court. As the law ever favours the heir, it will  
 presume *him* to have the right, until it be proved  
 that he is disinherited: he ought not therefore upon  
 any principle of law or equity to be driven to  
 expence and litigation, in order to prove his own  
 disinheriton; especially as such disinheriton is effected  
 by a legal act or instrument, which is warranted by  
 an expresse statute. But yet the title, which is ac-  
 quired under such will, is in its nature inferior to  
 the title acquired by the descent, which is cast at  
 law. (b) “ So if a devise be made to John Stiles  
 “ and his heirs, who is heir at law to the devisor,

(a) Hill v. Thornton 118.

(b) 3 Co. 31. a. Plowden’s Com. 344. p.

“ this is a void devise ; and the heir shall take by  
 “ descent as his better title, for the descent  
 “ strengthens his title, by taking away the entry  
 “ of such, as may possibly have right to the estate ;  
 “ whereas if he claims by devise, he is in by pur-  
 “ chase.”

It is a decided point (a), “ that where a man  
 “ makes a general devise of all his lands, and af-  
 “ terwards purchases other lands without any new  
 “ publication of his will, and dies, the after-pur-  
 “ chased lands shall not pass by the will, but shall  
 “ go to the heir at law ; for the statute impowers  
 “ only persons *having* lands to devise, and he had  
 “ not these after purchased lands at the time of  
 “ making his will, and therefore not within the  
 “ statute. Besides since the intent of the deviser  
 “ is the best rule for construing wills, it will be  
 “ very reasonable, that he never designed to con-  
 “ vey these particular lands, since he had them not  
 “ in his power nor possession, when he settled  
 “ the disposition of his other possessions.” The  
 statute of Char. II. requires the attestation of three  
 credible persons to every will passing land : now is  
 it not highly unreasonable, that the heir at law,  
 who is so materially interested in the date of the  
 will, or any codicil that may amount to a re-  
 publication of the will, and in the validity or nul-  
 lity of a will, by reason of the requisitions of the  
 statute of Char. II. should be driven to his action  
 to learn these simple points, upon which his own  
 right hinges ? So far from the devisee’s not being  
 compelled to publish and manifest his title under  
 the will, which is the case at present, I rather think  
 he ought moreover to be obliged, within a short  
 limited time after the death of the testator, to serve  
 the heir at law with an attested copy of the will.

(a) Gilbert. Law of Devises, p. 79.

I have said thus much of the legal, equitable and political effects, that an universal inrolment of all deeds and wills affecting lands must necessarily produce: it remains incumbent upon me to account to the public in a satisfactory manner, for the innovations, changes and alterations, introduced into the draught of the bill, which I have planned for the intended purpose, and subjoined to these sheets for the satisfaction of the public. I have chosen to be minute and particular in the draught, rather than propose the heads of a bill; judging, I hope rightly, that a more just and satisfactory judgment will be formed upon a plan executed, than executory.

It is a matter well known, that the erection and establishment of county registers have been at different times suggested, proposed and attempted in parliament, and always upon the principles, upon which I have endeavoured to shew the propriety and exigency of all deeds and wills affecting land being inrolled. It seems beyond question, that the record of a deed should not depend upon the experience, attention or judgment of the attorney or agent who records it, nor should it be otherwise recorded for this reason, than *verbatim* from the original. We have before seen how extremely mischievous the present method of entering the memorials of deeds is in the counties of York and Middlesex. I know not who E. B. Esquire was, who published the beforementioned pamphlet in 1696: it is however satisfactory to find persons coalesce in opinion at the distance of a century, especially when every reason for that opinion, hath been acquiring ground and strength in a most rapid and accumulated degree during the whole intermediate time. For the truth of this observation I only appeal to the reflection of each of my readers.

“ It would make the title of freehold estates as  
 “ certain

“ certain as that of copyholds : of which there is  
 “ no certainty now, by reason of latent deeds.  
 “ 2dly. It would prevent frauds in buying and sel-  
 “ ling, borrowing and lending. The borrower  
 “ could not impose upon the lender, because his  
 “ estate would appear in the register, as it was ;  
 “ nor could the lender impose any hard terms up-  
 “ on the borrower, because he would be able in a  
 “ short time to pay him off and transfer the debt  
 “ to another man. 3dly. This would certainly  
 “ lower the interest of money, increase trade and  
 “ husbandry.” And in setting forth the inconve-  
 niency and difficulties that he apprehended would  
 be raised against this plan, he continues : “ 1st. This  
 “ will prevent great numbers of lawsuits, for which  
 “ there will then be no occasion, frequent fines for  
 “ procuration and continuation money, which will  
 “ bring great loss to the lawyers and money-scri-  
 “ veners, and to some of the most thriving usu-  
 “ rers. 2dly. It will discover those men, that have  
 “ mortgaged their lands two, three or more times  
 “ over, and perhaps for more than they are worth.  
 “ 3dly. It will reduce the greatest usurer to  
 “ moderation and fair dealings. I do therefore ex-  
 “ pect that all these men will oppose it to the ut-  
 “ most, as it is their interest to do ; for though they  
 “ cannot take away the integrity of an honest man,  
 “ yet great care is to be taken, it may not be  
 “ known which are such. For when knaves are  
 “ once detected, they are undone ; and by them  
 “ the lawyer, money-scrivener, &c. get all their  
 “ wealth.”

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DRAUGHT of a Bill for requiring the Inrolment of all Deeds, Wills, and Codicils relating to, touching or affecting any Freehold and Leasehold Lands, Tenements or Hereditaments within the kingdom of England and dominion of Wales, and for other purposes therein mentioned.

Preamble.

WHEREAS it is of the most important consequence to purchasers and lenders of money upon land security, that the titles of the vendors and borrowers of such money, should be so clearly known and ascertained, that no possible fraud nor deceit can be practised against *bonâ fide* purchasers, mortgagees or other incumbrancers, by reason of any pre-conveyance or secret prior debt, charge or incumbrance :

And whereas it is consistent with the principle of the ancient laws of this realm, that the most solemn notoriety and publication should attend every change and affection of lands, tenements and hereditaments :

And whereas parliament hath at different times found it expedient to enact, that all deeds and wills affecting lands in certain counties should be registered, and that certain other deeds and wills should be inrolled or registered throughout the nation :

And whereas the provisions contained in such several acts of parliament made for the inrolment or registering of deeds and wills, have



have by experience been found in many instances insufficient and inadequate to the ends and purposes intended to be effected by the said acts:

And whereas upon full consideration of the matter, it hath appeared reasonable and expedient to repeal all the aforesaid acts, and to make one general act for the inrolment of all deeds, wills and codicils, by which any freehold or leasehold lands, tenements or hereditaments throughout England and Wales, shall be in any manner affected:

Be it therefore declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in parliament assembled, and by the authority of the same, that the statute made in the 27th year of the reign of <sup>27 H. 8.</sup> his late majesty King Henry VIII. "*for in-*  
"*rolling of bargains and sales;*" and also <sup>5 Eliz.</sup> an act made in the 5th year of the reign of her late majesty Queen Elizabeth, intituled, "*An act for the inrolment of indentures of*  
"*bargains and sales in the queen's majesty's*  
"*courts of the counties of Lancaster, Ches-*  
"*ter, and bishoprick of Durham;*" and also so much of an act made in the 21st year of <sup>21 Jac. 1.</sup> his late majesty King James the first, intituled, "*An act against such, as shall levy any*  
"*fine, suffer any recovery, acknowledge any sta-*  
"*tute, bail or judgment, in the name of any other*  
"*person or persons not being privy and consenting*  
"*thereto,*" as relates to the acknowledgment of deeds inrolled; and also an act made <sup>4 & 5 W. & M.</sup> in the 4th and 5th years of their late majesties King William and Queen Mary, intituled, "*An act to prevent fraud by clandest-*  
"*ine mortgages;*" and also so much of an act <sup>7 & 8 Wil. 3d.</sup>

passed in the 7th and 8th years of his said late  
 majesty King William III. intituled, "*An act*  
 "*for the continuing several acts of parliament*  
 "*therein mentioned,*" as perpetuates two se-  
 veral acts, one made in the 4th & 5th years  
 of the reign of their said late majesties King  
 William and Queen Mary, and the other in  
 the 6th & 7th years of the reign of their  
 said late majesties, *for the better discovery of*  
 2d & 3d Ann. *judgments in the court of King's Bench;* and  
 also an act made in the 2d & 3d years of the  
 reign of her late majesty Queen Ann, inti-  
 tuled, "*An act for the public registering of all*  
 "*deeds, conveyances and wills, that shall be*  
 "*made of any honors, manors, lands, tene-*  
 "*ments or hereditaments within the west-*  
 "*riding of the county of York, after the nine*  
 5th Ann. "*and twentieth of September 1704;*" and  
 also one other act made in the 5th year of the  
 reign of her said late majesty Queen Ann, in-  
 tituled, "*An act for the inolment of bargains*  
 "*and sales within the west-riding of the county*  
 "*of York, in the register-office there lately*  
 "*provided, and for making the said register*  
 6th Ann. "*more effectual;*" and also one other act  
 made in the 6th year of the reign of her  
 said late majesty Queen Ann, intituled,  
 "*An act for the public registering of all deeds,*  
 "*conveyances, wills and other incumbrances,*  
 "*which shall be made of, or that may affect any*  
 "*honors, manors, lands, tenements or here-*  
 "*ditaments within the east-riding of the county*  
 "*of York, or the town and county of Kingston-*  
 "*upon-Hull, after the nine and twentieth day*  
 "*of September 1708, and for rendering the*  
 "*register in the west-riding more complete;*"  
 7th Ann. and also one other act made in the 7th year  
 of the reign of her said late majesty Queen  
 Ann,

Ann, intituled, “ *An act for the public registering of deeds, conveyances and wills, and other incumbrances, which shall be made of, or that may affect any honors, manors, lands, tenements or hereditaments within the county of Middlesex, after the 29th day of September 1709;*” and also one other act made in the 1 Geo. 1.

1st year of the reign of his late majesty King George I. intituled, “ *An act to oblige Papists to register their names and real estates;*” and also one other act made in the 3d 3 Geo. 1.

year of the reign of his said late majesty King George I. intituled, “ *An act for explaining an act passed the last session of parliament, intituled, An act to oblige Papists to register their names and real estates, and for enlarging the time of such registry, and for securing purchases made by Protestants;*” and also one other 8 Geo. 2.

act made in the 8th year of the reign of his late majesty King George II. intituled, “ *An act for the public registering of deeds, conveyances, wills and other incumbrances, that shall be made of, or that may affect any honors, manors, lands, tenements or hereditaments within the north-riding of the county of York, after the 29th day of September 1736;*” and all the matters and things therein severally Repealed.

and respectively contained, shall be, and are hereby repealed, annulled and made void to all intents and purposes whatsoever.

And be it further declared and enacted by the authority aforesaid, That from and after the day of in the year of our Lord 1789, no deed, will nor codicil, by which any lands, tenements or hereditaments (except copyhold or customary lands) be the same freehold or leasehold, situate, lying and being within the kingdom of England

No deed, will, nor codicil affecting land to be valid, unless inrolled within six months,

land or dominion of Wales, shall or may be exchanged, altered, passed, charged, incumbered or affected in any manner whatsoever, shall be effectual, good or valid in law or equity, unless such deed, will or codicil within six calendar months to be computed respectively from the day of the date of such deed, or from the death of such testator or testatrix, dying within the kingdom of Great Britain or

or 3 years, if  
the deed or will  
be executed  
without the  
kingdom.

dominion of Wales, or within the space of three years to be computed respectively from the date of the deed, in case such deed shall have been executed out of the kingdom of Great Britain or Ireland, or from the death of every such respective testator or testatrix, dying upon or in any parts beyond the seas, shall be inrolled in some one of his Majesty's four courts of record at Westminster, or in the court or office hereby appointed and established in each county, riding or division, for the inrolment of all deeds, wills and codicils, relating to, touching, concerning or affecting lands, tenements or hereditaments, situate, lying and being within such county, riding or division respectively, in the manner and form hereby directed, appointed and required.

The inrolment  
to be notice to  
all persons.

And be it further declared and enacted by the authority aforesaid, That the actual inrolment of every such deed, will or codicil, shall, from and after the said day of

in the year of our Lord 1789, be, and be adjudged, deemed and taken to be and to have been from the time of such actual inrolment, express and legal notice of the estates, limitations, trusts, charges, powers, conditions, reservations, restrictions and provisions created, limited, declared, made, expressed and contained by and in such deeds, wills

or codicils respectively, to all subsequent purchasers, mortgagees, and other incumbrancers, and to all other persons whomsoever, any thing herein, or in any other statute contained, or any law, usage or custom of this kingdom to the contrary thereof in any way notwithstanding.

And be it further declared and enacted, by the authority aforesaid, That before any such deed shall be inrolled, it shall be acknowledged by the granting party or parties to the same, or by such party or parties thereto, whose execution thereof gives effect to such deed, before any one of his Majesty's justices of any of the courts of record, in which the same is intended to be inrolled, or before any master ordinary or extraordinary of the high court of Chancery, or before two justices of the peace for the county, riding or division, in the court or office of which, such deed is intended to be inrolled, and the name of such judge, master in Chancery, or of such justices of the peace, shall be subscribed to such acknowledgment; and the subscription of the name or names of such judge, master in Chancery, or justices of the peace, under such acknowledgment, upon the face of the deed shall be the authority and warrant to the clerks, officers or commissioners of the respective courts or offices to inrol the same, who in case the deed, upon which such acknowledgment shall appear to be subscribed as aforesaid, be properly stamp'd for inrolment, shall, and are hereby required to inrol the same according to the directions and requisitions of this act: and the form of every such acknowledgment to be written upon the face of every such deed to be inrolled, shall be as followeth, that is to say:

Every deed to be inrolled shall be acknowledged before a judge, master in Chancery, or 2 justices of the peace.

“ The



Form of acknowledgment.

“ The execution of this deed having been  
 “ acknowledged before me [or us] by  
 “ A. B. the party [or and C. D. parties]  
 “ thereto, who is [or are] bounden to ac-  
 “ knowledge the same, let it be inrolled in  
 “ his Majesty’s court of  
 “ or in the court or office for inrolling  
 “ deeds and wills in the county, [or  
 “ riding] of this day of  
 “ 178 A. B. [or A. B. and C. D.]”

Acknowledgments may be made by attornies.

Provided always, and be it further declared and enacted by the authority aforesaid, That in case any such person or persons, who is or are hereby required to acknowledge every such deed, before it shall be inrolled, shall not be able to appear personally before the judge, master in Chancery, or justices of the peace, in order to acknowledge and desire the same to be inrolled in the proper court or office as aforesaid, it shall and may be lawful to and for him, her or them, by some deed or deeds to be sealed and delivered by him, her or them, in the presence of, and to be attested by two or more credible witnessses, to make, authorize and ordain one or more attorney or attornies for him, her or them, and in his, her or their name or names to acknowledge the execution of such deed before such judge, master in Chancery, or justice of the peace as aforesaid, and for him, her or them to desire, that such deed may be inrolled: and every acknowledgment of such party [or parties] to a deed so made by his, her or their attorney or attornies, for that purpose especially made, authorized, and ordained as aforesaid, shall be as effectual to all intents, constructions, and purposes whatsoever, as if the party or parties had personally appeared, and acknowledged his,

his, her or their deed, before such judge, master in Chancery, or justices of the peace as aforesaid.

Provided always, and it is further declared and enacted by the authority aforesaid, That whenever any person or persons shall appear before such judge, master in Chancery, or justices of the peace, to acknowledge a deed for and in the name or names of the party or parties to the deed, it shall and may be lawful to and for any such judge, master in Chancery, or justices of the peace, whenever he or they shall think proper, to demand a proper legal affidavit of the execution of the warrant, power or letter of attorney by the party or parties hereby required to acknowledge the deed as aforesaid, and to refuse or withhold his or their signature to such warrant or direction for inrolment, until such affidavit as aforesaid shall be produced: And the form of every such acknowledgment to be written upon the face of every such deed to be inrolled, where the party or parties cannot personally appear, shall be as follows, that is to say.

Affidavit of the execution of the power of attorney may be acquired.

“ The execution of this deed by A. B. the party, [or and C. D. parties] who is [or are] bounden to acknowledge the same having been acknowledged by E. F. [or and G. H.] lawfully constituted the attorney [or attornies] for the said A. B. [or and C. D.] to acknowledge and desire the same to be inrolled by virtue of a special and proper power or warrant of attorney produced before me [or us] for that purpose, let it be inrolled in his Majesty’s court of or in the court or office for inrolling deeds and wills in the county [or riding] of

Form of acknowledgment by attorney.

“ of this day of 1788  
“ A. B. [or A. B. and C. D.]”

And it is further declared and enacted by the authority aforesaid, That no executor nor executrix, nor other person or persons who-  
soever claiming or deriving any beneficial interest, right or advantage under any will or codicil, shall, from and after the

day of in the year 1789, be enabled to sue for, claim or demand either at law or in equity, the whole or any part or parts of such beneficial interest, right or advantage, until the said will or codicil, in case it shall affect any freehold or leasehold lands, tenements or hereditaments, within the kingdom of England, or dominion of Wales, shall

Fiats for the in-  
rolment of wills.

have been inrolled in manner aforesaid: And before any such will or codicil shall be inrolled, a fiat, warrant or direction for inrolment shall be written upon such will, upon a proper and legal affidavit being produced, or an oath being made of the execution of such will or codicil by the testator or testatrix by one or more of the subscribing witnesses thereto, before such judge, master in Chancery or justices of the peace, as aforesaid; and then such judge, master in Chancery, or justices of the peace, shall subscribe his or their name or names to such *fiat*, warrant or direction; the form whereof shall be as followeth:

Form of the  
fiat.

“ Upon the affidavit of A. B. being produced  
“ [or upon the oath of A. B. being made]  
“ before me [or us] of the legal execution  
“ of this will or codicil by the testator or  
“ testatrix, let it be inrolled in his Maje-  
“ sty’s court of or in the court  
“ or office for inrolling deeds and wills in  
“ the county [or riding] of

“ this

“ this                      day of                      178  
 “ A. B. [or C. D and E. F.]”

Provided always, and be it further declared Provido in case of the deaths of attesting witnesses. and enacted by the authority aforesaid, That in case all such attesting witnesses shall have died before the expiration of the time limited by this act for the inrolment of such will or codicil, then such *fiat*, warrant or direction to inrol may be granted by any such judge, master in Chancery, or justices of the peace, upon the oath or affidavit of any credible person, who shall have sworn to the handwriting of any such attesting witness as aforesaid; and in such case the form of every such *fiat*, warrant or direction shall be as followeth :

“ Upon an oath having been made [or an Form of fiat in such case. affidavit having been produced] before  
 “ me [or us] by A. B. that the name of  
 “ C. D. one of the attesting witnesses to  
 “ this will or codicil, is in the handwriting of the said C. D. who, as well as  
 “ the other attesting witnesses thereto, is  
 “ since dead, let this will [or codicil] be  
 “ inrolled in his Majesty’s court of  
 “ or in the court or office for inrolling  
 “ deeds and wills in the county [or riding]  
 “ of                      this                      day of                      178  
 “ A. B. [or A. B. and C. D].”

And it is hereby further declared and enacted by the authority aforesaid, That the subscription of the name or names of such judge, master in Chancery, or justices of the peace to any such *fiat*, warrant or direction for inrolment, written upon any such will or codicil, shall be a complete authority and warrant to the clerks, officers or commissioners of the respective courts or offices, to inrol such will or codicil, who, in case the said will or codicil,  
 upon

The fiat signed in the warrant to the clerk for inrolling.

upon which such *fiat*, warrant or direction shall appear subscribed as aforesaid, be properly stamped for inrolment, shall and are hereby required to inrol the same according to the directions and requisitions of this act.

Provido in case  
of the loss or  
suppression of a  
will.

Provided always, and it is further declared and enacted by the authority aforesaid, That in case of any mis-laying, concealment or suppression of any such will or codicil, the space of six calendar months shall have elapsed from the death of the testator or testatrix, dying within the kingdom, or the space of three years from such death, in case of his or her dying without the kingdom as aforesaid, it shall and may be lawful to and for any such judge, master in Chancery, or justices of the peace, upon an oath or affidavit of the fact being made or produced before him or them to his or their satisfaction, to sign any such *fiat*, warrant or direction for inrolment, upon any such will or codicil so having been mislaid, concealed or suppressed as aforesaid, although the time shall have elapsed, within which it ought to have been inrolled, in case it had not been so mislaid, concealed or suppressed; and every such inrolment shall be as good, valid and effectual, as if the will or codicil so mislaid, concealed or suppressed had been inrolled within the time limited by this act, except as against purchasers for a valuable consideration, and all other incumbrancers without notice of such will or codicil, where the purchase or incumbrance shall have been made after the death of the testator or testatrix, and before the actual inrolment of the will or codicil so mislaid, concealed or suppressed.

And be it further declared and enacted by the authority aforesaid, That every person procuring



curing such acknowledgment of the execution of a deed or *fiat*, warrant or direction for the inrolment of a will or codicil, to be signed by such judge, master in Chancery, or justices of the peace as aforesaid, shall pay or cause to be paid the sum of 5s. to the person or persons signing the same. Fees for acknowledgments and fiats.

And be it further declared and enacted by the authority aforesaid, That no such deed, will nor codicil shall be inrolled as aforesaid, which shall not have been properly stamped according to the intent and meaning of the 12th section of the 19th of his present Majesty, c. 66. intituled, "*An act for granting to his Majesty several additional duties on stamped vellum, parchment and paper, and for better securing the stamp duties upon indentures, leases, deeds and other instruments;*" (that is to say) And it is hereby expressly declared to be the intention and meaning of the said lastmentioned act, as well as of this present act, that the number of stamps upon each deed, will or codicil, shall be proportioned to the number or quantity of words respectively contained therein, (that is to say); one proper stamp for inrolment for each deed, will or codicil, which shall contain a less number or quantity of words, than thirty common law sheets, (each common law sheet containing seventy-two words), and two such stamps for each deed, will or codicil, which shall contain any number or quantity of words exceeding thirty common law sheets, but less than forty-five such common law sheets; and so in proportion of one stamp for every fifteen common law sheets of seventy-two words each, which such deed, will or codicil shall contain over and above the number of fifteen common law sheets, where Regulation of the number of stamps to be used.

the deed, will or codicil contains in the whole more, than thirty common law sheets.

Confirmation of the practice of inrolling deeds in the courts of record.

Provided nevertheless, and it is hereby expressly declared and enacted by the authority aforesaid, That after such acknowledgment of the execution of a deed, or such *fiat*, warrant or direction for the inrolment of a will, shall have been signed by any such judge, master in Chancery, or justices of the peace as aforesaid, if the same shall be inrolled in any one of his Majesty's courts of record at Westminster, the same shall be inrolled therein in the manner and form, and for paying such fees, as are now used and established in each respective court, which usages and establishments are hereby allowed, ratified and confirmed.

Mode of inrolling in the county courts.

And be it further declared and enacted by the authority aforesaid, That every such deed, will or codicil, so to be inrolled in any court or office of inrolment in the county, riding or division, in which the lands, tenements or hereditaments comprised in or affected by such deed, will or codicil, are situate, lying and being, shall be first fairly and faithfully written or ingrossed upon proper rolls of parchment of one uniform size and dimension; which parchment shall be provided by the clerks, officers or commissioners of the different courts or offices, and shall be by them delivered *gratis* to all persons applying for the same, for the purpose of inrolling any deed, will or codicil thereupon in their respective court or offices; and when any such deed, will or codicil shall have been so written or ingrossed upon the rolls, and shall have been examined with, and found to be a true and faithful copy of the original deed, will or codicil,

dicil, by the person bringing the same to be inrolled, and one of the clerks, officers or commissioners of such court or office, or his or their deputy or deputies, in case there shall be the proper number of stamps by the aforesaid act passed in the 19th year of his said present Majesty, and hereby required upon the deed, will or codicil so to be inrolled, then such deed, will or codicil, shall be inrolled or entered upon or amongst the rolls of such court or office, there to remain a record of such court or office; and the clerk, officer or commissioner of the respective court or office, or his deputy or deputies, shall thereupon indorse upon every such deed, will or codicil, a certificate of the time of inrolling the same, and sign such indorsed certificate.

Provided always, and be it further declared and enacted by the authority aforesaid, That in case any such clerk, officer or commissioner, or his or their deputy or deputies, shall inrol or suffer to be inrolled, any deed, will or codicil, which shall not have been stamped, according to the directions and requisitions of the said act of the nineteenth year of the reign of his said present Majesty, and of this act, every such defaulter or defaulters shall forfeit the sum of £. 50 of lawful money of Great Britain, with treble costs of suit for every fifteen common law sheets, which shall be contained in any such deed, will or codicil, over and above the quantity or number of words, thereby and hereby allowed of or limited to each stamp, to any person or persons who shall within five years after the inrolment of any such deed, will or codicil, without the requisite number of stamps, inform or sue for the same, in any court of record within the king-

£. 50 penalties upon officers inrolling without a proper number of stamps.

To be recovered upon information within five years.

dom of England or dominion of Wales, by action of debt, bill, plaint or information, wherein no essoign, protection, nor wager of law shall be allowed.

Where deeds and wills affecting lands lying in divers counties may be inrolled.

And be it further declared and enacted by the authority aforesaid, That wherever any one deed, will or codicil shall concern, relate to or affect lands, tenements or hereditaments, situate, lying and being in divers counties, ridings or divisions, it shall be at the option of the person or persons inrolling the same, to inrol such deed, will or codicil, in any of the four courts of record at Westminster, or in any court or office of a county, riding or division, in which any of the said lands, tenements or hereditaments, comprised in or affected by such deed, will or codicil, shall be situate, lying and being.

Where lands lying in divers counties are affected by one deed or will, abstracts to be entered in each respective county court.

And be it further declared and enacted by the authority aforesaid, That wherever any deed, will or codicil, shall have been inrolled in any of his Majesty's four courts of record at Westminster, or in any county court or office of inrolment, where the lands, tenements or hereditaments comprised in or affected by such deed, will or codicil, shall be in divers counties, ridings or divisions, then an abstract of so much of such deed, will or codicil, as relates to, concerns or affects the lands, tenements or hereditaments, situate, lying and being in any particular county, riding or division, in which such deed, will or codicil shall not be inrolled, shall within the space of three calendar months, to be computed from the time, at which such deed, will or codicil ought to be inrolled, be entered or inrolled in the county court or office, in which such lands, tenements or hereditaments, comprised

comprised in or affected by such deed, will or codicil, are situate, lying and being respectively : and every such abstract so to be entered or inrolled, shall be written or ingrossed upon vellum or parchment (to be provided and delivered by the clerks, officers or commissioners, in manner aforesaid) in a fair, legible hand ; and shall contain the date of the deed, will or codicil, the names of the parties to such deed, or the name and description of the testator or testatrix of any such will or codicil, and a sufficient description of the parcels to ascertain the lands, tenements or hereditaments, situate, lying and being within the respective county, riding or division, in the court or office of which, such abstract shall be entered, and the uses, limitations, trusts, charges, powers, conditions, provisoes and agreements, by which such lands, tenements and hereditaments are affected, and the execution of the different parties, who shall have executed the same, and the time at which, and the court or office, in which such deed, will or codicil shall have been inrolled : And before any such abstract shall be entered as aforesaid, the original deed so inrolled, or the original will or codicil, or a probate thereof shall be produced to the commissioners, officers or clerks, or their sufficient deputy or deputies, who after having examined such abstract with the original deed, will or codicil, or probate, and found the same to be a faithful and true abstract thereof respectively, shall indorse upon such deed, will, codicil or probate, a certificate under his or their hand or hands, that a true abstract of so much thereof hath been entered in their respective court or office, as relateth

What each abstract shall contain.

Certificates of the abstracts to be indorsed upon the deed, will or codicil, or probate.



to or concerneth any lands, tenements or hereditaments, over which their respective court or office extendeth.

Fees for entering abstracts.

And be it further declared and enacted by the authority aforesaid, That the commissioners, officers or clerks, shall be allowed for the entry of every such abstract, as is by this act directed and required to be entered, the sum of twopence and no more, for every common law sheet of seventy-two words each sheet, and so in proportion for a greater or less quantity or number of words, which such abstract shall contain.

The certificate indorsed upon inrolled deeds to be evidence of the inrolment.

And be it further declared and enacted by the authority aforesaid, That all deeds, wills and codicils, so inrolled either in any of the said courts of record at Westminster, or in any of the said courts or offices for inrolling the same in the different counties, ridings or divisions as aforesaid, which shall appear to be so inrolled by certificate of such inrolment, indorsed upon any such deed, will or codicil, and signed by the proper clerk, officer or commissioner respectively, shall be taken and allowed as evidence of such inrolment, in all courts of record and elsewhere.

Office copies of inrolments to be evidence, where the original not forthcoming.

And it is further declared and enacted by the authority aforesaid, That in all cases, in which any person or persons claiming under any deed, will or codicil inrolled, shall not have the possession, custody, nor power of the original deed, nor of the will, codicil, or probate thereof, then where in any declaration, avowry, bar, replication or other pleading whatsoever, any such deed, will or codicil inrolled, shall be pleaded with a *profert in curiâ*, or offer to produce the same, the person or persons so pleading, shall and may produce  
and

and shew forth, and be suffered and allowed to produce and shew forth, by the authority of this act, to answer such *proferit*, as well against his Majesty, his heirs and successors, as against any other person or persons whomsoever, a copy of the inrolment of such deed, will or codicil; and such copy examined with the inrolment, and signed by the proper clerk, officer or commissioner, and proved upon oath to be a true copy so examined and signed, shall be of the same force and effect, to all intents and constructions of law and equity, as the original deed, will or codicil inrolled, would or should be of, if the same were in any such case produced and shewn forth in any court of record or elsewhere.

And be it further declared and enacted by the authority aforesaid, That there shall be erected and established public offices for inrolling and preserving the rolls and abstracts of all deeds, wills and codicils within the time, in the manner, and at the places hereinafter limited, directed and appointed; (that is to say) before the day of 1789, there shall be constructed a strong and dry building or repository, so detached from any other buildings, as to render the same secure from fire or other accidents, in which such rolls may be safely deposited, and so near unto the court or office for inrolling deeds, wills and codicils, that the same may be daily deposited therein at such hours, at which they shall not be kept open for public inspection, examination or use, at each of the following places, in which all deeds, wills and codicils, or abstracts thereof relating to, touching or affecting lands, tenements and hereditaments, situate, lying and being within the counties,

Offices to be established.

divisions or ridings, hereinafter mentioned, shall be inrolled or entered respectively, (that is to say) :

At Bedford for the county of Bedford.

At Reading for the county of Berks.

At Aylesbury for the county of Bucks.

At Cambridge for the county of Cambridge.

At Chester for the county of Chester, with the city and county of the city of Chester.

At Launceston for the county of Cornwall.

At Carlisle for the county of Cumberland.

At Derby for the county of Derby.

At Exeter for the county of Devon, with the city and county of the city of Exeter.

At Dorchester for the county of Dorset, with the city and county of the city of Pool.

At Durham for the county palatine of Durham.

At Chelmsford for the county of Essex.

At Gloucester for the county of Gloucester, with the city and county of the city of Gloucester, and the city and county of the city of Bristol.

At Hereford for the county of Hereford.

At Hertford for the county of Hertford.

At Huntingdon for the county of Huntingdon,

At Canterbury for the county of Kent, and the county of the city of Canterbury.

At Preston for the county palatine of Lancaster.

At Leicester for the county of Leicester.

At Lincoln for the county of Lincoln.

At London for the county of Middlesex.

At Monmouth for the county of Monmouth.

At Norwich for the county of Norfolk, with the city and county of the city of Norwich.

At

- At Northampton for the county of Northampton.
- At Newcastle upon Tyne for the county of Northumberland, with the town and county of the town of Newcastle upon Tyne and the town of Berwick upon Tweed.
- At Oxford for the county of Oxford.
- At Oakham for the county of Rutland.
- At Shrewsbury for the county of Salop.
- At Taunton for the county of Somerset.
- At Winchester for the county of Southampton, with the town and county of the town of Southampton.
- At Stafford for the county of Stafford, with the county and city of Litchfield.
- At Ipswich for the county of Suffolk.
- At Guilford for the county of Surry.
- At Chichester for the county of Sussex.
- At Warwick for the county of Warwick, with the city and county of the city of Coventry.
- At Kendal for the county of Westmoreland.
- At Worcester for the county of Worcester, with the city and county of Worcester.
- At Salisbury for the county of Wilts.
- At Wakefield for the west-riding of the county of York.
- At Northarlerton for the north-riding of the county of York.
- At Beverley for the east-riding of the county of York, with the town and county of the town of Kingston upon Hull.
- At Beaumaris for the county of Anglesea.
- At Brecon for the county of Brecknock.
- At Cardigan for the county of Cardigan.
- At Carmarthen for the county of Carmarthen, and county borough of Carmarthen.
- At Caernarvon for the county of Caernarvon.
- At Denbigh for the county of Denbigh.

At

At Flint for the county of Flint.

At Cardiff for the county of Glamorgan.

At Bala for the county of Merioneth.

At Montgomery for the county of Montgomery.

At Pembroke for the county of Pembroke, and town and county of Haverford West.

At Radnor for the county of Radnor.

County courts or offices how to be built and repaired.

All which said buildings, repositories, courts or offices, shall be purchased, built, repaired and established at the public charge of each county, division or district respectively, to be raised by the justices of the peace thereof, at the general quarter sessions of the peace, in such manner, as they are empowered to raise money for the repairs of public or county bridges, and in such places, as to the majority of the said justices of the peace, at their general quarter sessions, shall seem most proper and convenient.

The officers or clerks how to be elected.

And be it further declared and enacted by the authority aforesaid, That the said officers, commissioners, or clerks for managing and conducting the business of such offices or courts, shall be appointed in manner following (that is to say): At the first general quarter sessions of the peace, which shall be holden for the respective county, riding or division, in which a court or office is to be erected or established, after the day of 1789, every person representing in parliament the county, or any city or borough within the district, over which the respective inrolment-court or office shall extend, shall either attend in person, or by some fit person authorised and empowered under a proper power of attorney, sealed, signed and delivered by such



such absentee, in the presence of two credible persons, and shall there deliver in to the said court of quarter session, a paper in the handwriting of such absent elector, containing the name, quality and description of the person, whom he chuses and elects for the clerk, officer or commissioner of the inrolment-court or office of that respective district; and in case of such elector appearing by deputy, proxy or attorney, the oath of such deputy, proxy or attorney shall be taken in open court, that the paper delivered into court was signed and sealed by the absent elector in his presence: And the person, who shall have a majority of such votes, shall be declared by the said court to be duly elected the commissioner, officer or clerk of the said inrolment-court or office; and shall from thenceforth be duly appointed, and shall continue in such commission, charge or office, for so long a time, as he shall well and faithfully demean himself therein; and in case any two or more persons shall have an equal number of votes, then the majority shall be decided by the votes of the major part of the justices of the peace, (not being any of them members of parliament) who shall be then upon the bench; and in case they shall be divided into equal numbers, then the senior justice shall have the casting vote.

Provided nevertheless, and it is hereby further declared and enacted by the authority aforesaid, That no such election as aforesaid shall be had or made for any officer, clerk or commissioner, for any of the inrolment-offices within the three ridings of the county of York, until the death, resignation, surrender or vacation of the present registers, or any of them,

The registers of the three ridings of the county of York to remain till death or vacation.

them, but they shall continue from thenceforth so long as they shall well demean themselves in their said respective offices, commissions or charges, but shall from the day of 1789 regulate, perform and execute the business of their respective courts or offices, according to the tenor, requisitions and intentions of this act; and all future officers, clerks or commissioners for the said ridings shall be elected and chosen in the manner hereby directed and required.

Who to be the  
clerks for the  
office for Middlesex.

Provided also, and it is further declared and enacted by the authority aforesaid, That from and after the day of 1789, the register-office for the county of Middlesex shall be converted into the court or office for inrolling all deeds, wills and codicils affecting lands, tenements and hereditaments, lying within the said county, and the sworn clerk to execute the office of inrolment in the high court of Chancery, who is appointed to inrol for the county of Middlesex, the chief clerk to inrol pleas in the King's Bench, the clerk of the warrants in the court of Common-Pleas, and the King's remembrancer or his deputy in the court of Exchequer, shall be the clerks, officers or commissioners of the said inrolment-court or office for the county of Middlesex; and they shall and may from time to time nominate and appoint one or more able and sufficient person or persons, for whom they shall be accountable and responsible, to be their deputy or deputies; and they shall continue to be nominated and appointed in the manner, in which they have heretofore usually been nominated and appointed; and they shall regulate, perform and execute the business of such inrolment-court  
or

or office, for the said county of Middlesex, according to the tenor, requisitions and intentions of this act.

And be it further declared and enacted by the authority aforesaid, That if any such officers, commissioners or clerks, either by themselves or by their deputies, shall neglect to perform his or their duty in the execution of their said offices, charges or commissions, according to the regulations and forms by this act directed and required, or commit or exercise, or suffer or procure to be committed or exercised, any undue or fraudulent practice in the execution of their said offices, charges or commissions, and be thereof lawfully convicted, then such clerk, officer or commissioner shall forfeit his said office, charge or commission, and pay treble damages with full costs of suit, to every such person or persons, as shall be injured thereby, to be recovered by action of debt, bill, plaint or information, in any of his Majesty's courts of record at Westminster, wherein no essoin, protection, privilege, nor wager of law shall be allowed, nor any more than one imparlance.

Penalty on officers neglecting duty.

And it is further declared and enacted by the authority aforesaid, That all and every such person and persons so to be elected, nominated or appointed as aforesaid, before they or he shall enter upon the execution of the said office, employment or charge as aforesaid, shall be sworn before one or more of the justices of any of his Majesty's courts of record at Westminster, or before three or more of the justices of the peace for the county, riding, division or district, for which they or he shall be so elected, nominated or appointed commissioners, officers or clerks as aforesaid, who

Oath to be taken by the officers or clerks.

are

are hereby authorized, empowered and required to administer such oath in the following words, (that is to say):

“ I *A. B.* having been elected, nominated  
 “ or appointed a commissioner, officer  
 “ or clerk for executing and managing  
 “ the court or office of inrolling deeds,  
 “ wills and codicils, within the county  
 “ [or riding] of                      do hereby  
 “ solemnly swear, that I will duly, just-  
 “ ly and faithfully perform and execute  
 “ the said office, charge or commission,  
 “ according to the tenor, directions and  
 “ requisitions of an act of parliament  
 “ made in the 29th year of his Majesty  
 “ King George the Third, intituled,  
 “ “ *An act for requiring the inrolment of*  
 “ *all deeds, wills and codicils relating to,*  
 “ *touching or affecting any freehold and*  
 “ *leasehold lands, tenements or heredita-*  
 “ *ments, within the kingdom of England,*  
 “ *dominion of Wales, and for other pur-*  
 “ *poses therein mentioned,”* according to  
 “ the best of my judgment and the dic-  
 “ tates of my conscience.

“ So help me GOD.”

And to find two  
 sureties to enter  
 into recogniz-  
 ances of £.6000  
 each.

And be it further declared and enacted by the authority aforesaid, That every such commissioner, officer or clerk so to be elected, nominated or appointed as aforesaid, before his admission to such office, employment or charge, shall find two sufficient sureties, who shall enter into separate recognizances, before the lord high chancellor of England, or the chief justice of his Majesty's court of King's Bench or of the Common Pleas, or of the chief baron of his Majesty's court of Exchequer at Westminster, wherein they shall be-  
 come

come severally and respectively bounden to his Majesty, his heirs and successors, in the sum of £. 6000 each, for the punctual and faithful execution of the said office, employment or charge, by the person so to be elected, nominated or appointed, for whom they shall have entered into such security as aforesaid.

Provided nevertheless, and be it further declared and enacted by the authority aforesaid, That when any such commissioner, officer or clerk shall die, or surrender or vacate his office, charge or commission, and if within the space of three years from and after such death, surrender or vacation, no misbehaviour appear to have been committed by such officer, clerk or commissioner, in the execution of his said office, charge or commission, then and in such case, at the end of the said three years after such death, surrender or vacation, the said recognizance so entered into shall become void and of none effect, to all intents and purposes whatsoever.

Recognizances  
to become void  
in three years  
after death or  
vacation.

And be it further declared and enacted by the authority aforesaid, That from and after the      day of      in the year of our Lord 1789, it shall and may be lawful to and for such commissioners, officers or clerks for the time being, to ask and demand from every person inrolling any such deed, will or codicil as aforesaid, the sum of threepence for every common law sheet or folio, and so in proportion for a greater or less number contained in the deed, will or codicil so to be inrolled; and also one shilling for every certificate, which they shall indorse upon any such deed, will or codicil, as hereinbefore they were directed to do.

Fees for inrolling.

And



Office to be open  
for searches.

And be it further declared and enacted by the authority aforesaid, That the said several entries and inrolments shall be kept in such courts or offices open for the inspection of all persons, upon all days (except Sundays and holydays) throughout the year, from the hour of ten o'clock in the forenoon till three o'clock in the afternoon of the same day; and the said commissioners, officers or clerks for the time being, and their deputies, are hereby authorised and empowered to demand the sum of one shilling from every person, for each search, which he or she shall chuse to make; and also to demand the sum of five shillings for every fifteen common law sheets, which they shall be required to make an extract or copy of, and so in proportion for a greater or less number of words.

Fees for  
searches,

and for copies.

Office copies to  
be stamped as in  
Chancery.

Provided nevertheless, and it is hereby further declared and enacted by the authority aforesaid, That no such office-copy of the whole or any part of any such deed, will or codicil shall be made, but upon such stamps, as are directed and required to be put upon all office copies of deeds, wills or proceedings made in any of the offices connected with or dependant upon the high court of Chancery.

Books to be  
kept regularly  
and orderly.

And be it further declared and enacted by the authority aforesaid, That in every such court or office for inrolling deeds, wills and codicils as aforesaid, the clerk, officer or commissioner of such respective court or office shall, as he is hereby bounden to the faithful discharge of his office, charge or commission, to keep and preserve proper books, in which entries shall be made of all deeds, wills and codicils, and of all abstracts, that have been inrolled or entered in that particular court or office;

office : And every such entry shall set forth the date of the deed, will or codicil, or abstract, and the name and names of the granting or covenanting party or parties to the deed, or of the testator or testatrix, and the time, at which the same was inrolled or entered.

And be it further declared and enacted by the authority aforesaid, That all such payments hereby directed to be made into the said courts or offices, shall be paid unto and received by the commissioners, officers or clerks for the time being, for their care, management and custody of such inrolments and entries, and for attending by themselves or deputies, at such hours during which the said courts or offices are hereby directed to be kept open as aforesaid, and for computing and examining all such deeds, wills, codicils and abstracts, and for making extracts and copies thereof, and also for making and keeping such books of entries and references, and also for collecting and making out such entries of all deeds, wills, codicils and abstracts, and transmitting the same every half-year to the clerk, officer or commissioner of the reference office in London, as is hereinafter mentioned, and also for paying and discharging all the costs, charges and expences of all the parchment and paper used in their respective courts or offices, and also for paying and discharging whatever yearly or other payments, rents, taxes, impositions or assessments shall from time to time become due and payable, for and in respect of the houses, buildings and premises, in which such courts or offices, and repositories shall be, and also whatever monies shall from time to time be required to keep the same in constant,

The fees, how  
to be applied.

stant, good and substantial repairs, and also for defraying all the expences, costs and charges, which shall be incurred by the postage and carriage of letters, packets and parcels, and generally by all other matters relative to the business of the said courts or offices.

A reference office to be established.

And in order, that persons having occasion to search the different courts or offices for the enrolment of such deeds, wills and codicils, may do the same with the greater ease, certainty and satisfaction; be it further declared and enacted by the authority aforesaid, That from and after the      day of      in the year 1789, there shall be erected or purchased and established a *reference office* in or near in the said county of Middlesex, at the joint expences and by equal contribution of each county, riding and division throughout England and Wales, in which any such court or office is or shall be established as aforesaid.

King to appoint clerks of the reference office.

And it is further declared and enacted by the authority aforesaid, That it shall and may be lawful to and for the King's Majesty, his heirs and successors to nominate and appoint by commission, to be issued under the great seal of Great Britain, such two persons, as his Majesty shall think fit to be the officers, clerks or commissioners, for managing, conducting and executing the business of such reference office by themselves, or their sufficient deputy or deputies, and who shall continue in such office, charge or commission so long, as they shall well and faithfully demean themselves therein; and they shall before their admission to such office, charge or commission, find two sufficient sureties, who shall enter into separate recognizances, before the lord high Chancellor

The clerks to find two sureties, to enter into recognizances of 3000 l. each.

cellor of England, or the lord chief Justice of his Majesty's court of King's Bench, or of the Common Pleas at Westminster, or the lord chief Baron of his Majesty's court of Exchequer, wherein they shall become respectively bounden to his Majesty, his heirs and successors, in the sum of £. 3000 each, for the punctual and faithful execution of the said office, charge or commission, by the persons so to be nominated, appointed and commissioned as aforesaid: And such officers, clerk or commissioners, shall also before their admission to the said office, charge or commission, before the lord high Chancellor of England, or the chief Justice of his Majesty's court of King's Bench, or of the Common Pleas, at Westminster, or of the chief Baron of his Majesty's court of Exchequer, take and subscribe an oath in the form following; that is to say—

And take the oath of office.

“ I A. B. having been appointed by his Majesty's commission, under the great seal of Great Britain, an officer, clerk or commissioner of the reference office, do hereby solemnly swear, that I will, duly, justly and faithfully execute the said office, charge or commission, according to the tenor, condition, and requisitions of the act of the 29th year of the reign of his Majesty King George III. intituled, “ *An act for requiring the inrolment of all deeds, wills and codicils, relating to, touching or affecting any freehold or leasehold lands, tenements or hereditaments within the kingdom of England and dominion of Wales, and for other purposes therein mentioned.*” So help me God.”

And it is further declared and enacted by the authority aforesaid, That separate and distinct

The books, how to be kept.

distinct books for each county, riding or division, in which a court or office is or shall be erected or established, shall be kept and preserved in the reference office, in which entries shall be made of all deeds, wills and codicils, and of all abstracts, that have been inrolled or entered in any of the courts of record, or county courts or offices respectively as aforesaid; and every such entry shall set forth the date of the deed, will or codicil or abstract, and the name or names of the grantor or grantors, grantee or grantees, or of the testator or testatrix, and the county or counties, in which the lands, tenements or hereditaments affected by such deed, will or codicil lie, and the court in which, and the time, at which the same was inrolled or entered.

One shilling to be paid for each deed towards the reference office.

And it is further declared and enacted, by the authority aforesaid, That every person inrolling or causing to be inrolled or entered any deed, will or codicil or abstract as aforesaid, in any of the said courts of record, or in any of the said county courts or offices, is hereby required to pay one shilling over and above all other payments hereby directed and required to be made as aforesaid, for every such deed, will or codicil or abstract, so inrolled or entered as aforesaid, unto the clerk, officer or commissioner of the court, in which such deed, will or codicil or abstract, is respectively inrolled or entered.

Entries to be transmitted once in every month to the reference office.

And it is further enacted and declared by the authority aforesaid, That the officers, commissioners or clerks of the different county courts, are hereby directed and required, in consideration of the aforesaid emoluments and perquisites hereby allowed unto them, to transmit once in every month, such entries of the different deeds, wills, codicils and abstracts,



tracts, as have been inrolled and entered in their respective court or office, to the officers clerks or commissioners of the said reference office, who are also hereby required to enter the same forthwith in the several and respective books, in the manner and form aforesaid; and to pay or transmit, or cause to be paid or transmitted, at the same time, the sum of one shilling unto the clerks, commissioners or officers of the said reference office, which they shall have received in manner aforesaid:

And the said officers, clerks or commissioners of the said reference office, shall once in every month, make or cause to be made, an extract or entry of every deed, will or codicil, inrolled in any of the said courts of record at Westminster; and they shall receive from the clerks, officers or commissioners of the respective courts, in which such deed, will or codicil shall be inrolled, the sum of one shilling for each deed, will, codicil or abstract, which shall have been received by them, at the time of their original inrolment or entry respectively; all which extracts or entries shall be fairly written and regularly entered in the books for the different counties for that purpose kept in the said reference office.

The clerks of the reference office to extract monthly all deeds and wills inrolled in the courts of record.

The entries to be made in the books of the reference office.

And it is further declared and enacted by the authority aforesaid, That from and after the said day of                      in the year 1789, whenever a judgment, statute or recognizance, (other than and except such, as shall be entered in the name and upon the proper account of his Majesty, his heirs or successors) shall be obtained or entered into, of or concerning, or whereby any freehold or leasehold lands, tenements or hereditaments, within the

Notice to be given in writing at the reference office of judgments, statutes and recognizances.

kingdom of England, or dominion of Wales, can, shall or may be in any manner affected, in law or equity, the plaintiff or plaintiffs, conusee or conusees, shall within the space of three days after the entering up of any such judgment or acknowledgment of any such statute or recognizance, is and are hereby required to give notice thereof in writing to the clerks, officers or commissioners of the said reference office; and every such notice, which shall be signed by the clerk or clerks of the court, in which such judgment, statute or recognizance shall be recorded respectively, shall contain the name or names of the plaintiff or plaintiffs, and defendant or defendants, conusor or conusors, and conusee or conusees, in such judgment, statute or recognizance respectively; the day, on which such judgment shall have been entered up, or such statute or recognizance shall have been acknowledged, and the amount of the sum or sums of money, for which such judgment shall have been obtained, or such statute or recognizance shall have been acknowledged respectively; and the county, riding or division, in which any lands, tenements or hereditaments are situate, lying and being, which are affected thereby in law or equity: And the clerks, officers or commissioners of the said office, shall and are hereby required to make entries thereof, in the respective books of the said reference office; and shall and are also hereby required within the space of three days, to be computed from the time of their receiving such notice or notices, to transmit a copy or copies of the entry of every such judgment, statute or recognizance, to the clerk, officer or commissioner of the court or office, within the

Entries thereof  
to be made.

the district of which, any of the lands, tenements or hereditaments, so affected by the judgment, statute or recognizance as aforesaid, are situate, lying and being, in order that a proper entry may be made of such judgment, statute or recognizance, in the books of each court or office, by the respective clerk, officer or commissioner thereof, who in consideration of the allowances hereby made to him and them, is and are hereby required to enter such copies so transmitted to them in their respective books.

Provided always, and it is further declared and enacted by the authority aforesaid, That no such judgment, statute nor recognizance, shall in any manner affect any lands, tenements or hereditaments, of or concerning which, such notice shall not have been given to or left with the clerks, officers or commissioners of the said reference office as aforesaid.

No land to be affected by a judgment, &c. unless notice left at the reference office.

And it is further declared and enacted by the authority aforesaid, That the clerks, officers or commissioners of the said reference office, are hereby authorized and empowered to demand of and from such plaintiff or plaintiffs, conusee or conusees, the sum of one shilling for each county, riding or division, to the court or office of which, they are hereby required to send or transmit such notice of any judgment, statute or recognizance as aforesaid.

Fee of one shilling for the clerks transmitting the notice to each county court.

And it is further declared and enacted by the authority aforesaid, That from and after the day of                      in the year of our Lord 1789, in case the whole or any part of the money secured under or by virtue of any deed, will, codicil, judgment, statute or recognizance,

Satisfactions how to be entered and certified.

nizance, which shall have been so inrolled or entered as aforesaid, shall be paid off, satisfied or discharged, if at any time or times afterwards a certificate shall be brought to the clerk, officer or commissioner of the court or office, in which such inrolment or entry shall have been made, signed by the person or persons entitled to receive such monies, and attested by two credible witnesses specifying the amount of the monies paid off, satisfied and discharged, (which witnesses shall upon their oath before any one of the Judges of his Majesty's court of King's Bench or Common Pleas, or any one of the Barons of the court of Exchequer, or before any one of the masters of the court of Chancery, or before any two or more justices of the peace, or before the clerk, officer or commissioner of the court or office, in which such deed, will, codicil, judgment, statute or recognizance shall have been inrolled or entered respectively, who are hereby respectively impowered to administer such oath, prove such monies to have been paid off, satisfied or discharged accordingly, and that they saw such certificate signed by the person or persons intitled to receive the same) and then in every such case, the clerk, officer or commissioner, or his or their deputy or deputies, shall make an entry in the margin, or at the foot of every such roll of a deed, will or codicil, and in the margin of every book opposite to the entry of every judgment, statute or recognizance, under or by virtue of which, the monies so paid off, satisfied or discharged, shall have been secured or made payable, that the same have been paid off, satisfied and discharged according to such certificate, to which the same roll or entry shall refer; and shall

shall after file such certificate to remain upon record in the said court or office : and all such clerks, officers or commissioners are hereby authorized and impowered to demand the sum of one shilling from every person or persons bringing such certificate, to be entered and filed as aforesaid.

And it is further declared and enacted by the authority aforesaid, That the said several books of entries or extracts shall be kept in the said reference office open for the inspection of all persons, upon all days (except Sundays and holydays) throughout the year, from the hour of ten of the clock in the forenoon, 'till three of the clock in the afternoon of the same day : And the officers, clerks or commissioners for the time being, of the said reference office, and their deputies, are hereby authorized and impowered to demand the sum of one shilling from every person, for each search, which he or they shall make ; and also to demand the like sum of one shilling, for every entry or extract, which they shall be required to make a copy of.

The books to be open for searches.

Fees for searches and copies.

And it is further declared and enacted, by the authority aforesaid, That as well the monies paid or remitted to the clerks, officers or commissioners of the said reference office, at the time of their taking or receiving such entries or extracts as aforesaid, as the monies received for all searches and copies as aforesaid, shall be allowed unto the said clerks, officers or commissioners, for attending and collecting such entries or extracts from the said courts of record in manner aforesaid ; and for purchasing, digesting and keeping the aforesaid books, and making such entries and extracts therein, and for attending the said office

Application of fees.



office at the hours before mentioned, and for defraying the expences and charges of keeping one or more deputy or deputies, and also for paying and discharging whatever yearly or other payments, rents, taxes or assessments, shall from time to time become due and payable, for and in respect of the house, buildings, and premisses, in which the said reference office shall be, and also whatever monies shall from time to time be required to keep the same in constant, good and substantial repair, and also for defraying all the expences, costs and charges, which shall be incurred by the postage or carriage of letters, packets and parcels, and generally by all other matters necessarily relating to, touching or concerning the said reference office.

Members of parliament not eligible.

And be it further declared and enacted by the authority aforesaid, That no member of parliament for the time being, of any county, city or borough, shall be capable of being chosen clerk, officer or commissioner of any such court or office of a county, riding or division, or of the reference office, or of executing by himself or any other person, such office, or have, take or receive any fee or other profit whatever, for or in respect thereof; nor shall any such clerk, officer or commissioner, or his or their deputy or deputies for the time being, be capable of being chosen to serve in parliament.

Recital.

And whereas it sometimes happeneth, that wills and codicils are destroyed, mislaid, lost or suppressed, by accident, neglect or design, whereby the rights of your Majesty's liege subjects, who might have claimed under such wills and codicils, are defeated; and  
whereas

whereas it may be satisfactory for many persons having made wills or codicils to wills, or other testamentary dispositions or instructions, that the same may be deposited during their lives, in some secure repository, and that no person, but the testator or testatrix can have access during his or her life to such wills or codicils, and no other but the proper person or persons can have access to or acquire the possession thereof after their deaths; be it therefore declared and enacted, by the authority aforesaid, That from and after the

day of

in the year

of our Lord 1789, the said clerks, officers or commissioners of the said reference office shall prepare and distribute into alphabetical and chronological order, an apartment in the said reference office, in which all wills or codicils, or testamentary dispositions or instructions which shall be brought to the said office, shall be deposited, and safely and orderly kept, until the same shall be required to be delivered out in manner hereinafter mentioned.

The clerks to provide an apartment in the reference office, for depositing wills.

And be it further declared and enacted, by the authority aforesaid, That if any person chusing to leave or deposit his or her will or codicil, or testamentary disposition or instructions in the said office, shall bring the same to the said clerks, officers or commissioners, and pay the sum of 2s. 6d. to such clerks, officers or commissioners, then such clerks, officers or commissioners shall annex or affix unto such will or codicil, or testamentary disposition or instructions, or unto the cover, packet or parcel, which shall contain the same, a label or slip of parchment, upon which shall be written the name and description of the

The manner of depositing wills, &c. fees to be paid.

testator

testator or testatrix, with some numerical figure or figures, and the name of the clerks, officers or commissioners, and the same shall be stampd with the stamp of the office, and that part of the label or slip of parchment, which shall contain the name of the clerks, officers or commissioners, and the numerical figure or figures, shall be cut off by an indented section, and delivered to the testator or testatrix, which being produced to the clerks, officers or commissioners of the said reference office, or to their deputy or deputies, shall be to him or her a certificated authority to demand the delivery of the will, codicil, testamentary disposition or instructions, or the packet or parcel, to which the same shall belong; and an entry shall be immediately forthwith made in the books, which the clerks, officers or commissioners for the time being, are hereby required to keep for that purpose in alphabetical and chronological order, of the day, on which the same was left or deposited, and of the name and description of the testator or testatrix, and of the numerical figure or figures expressed upon the label or slip of parchment as aforesaid; and every such entry shall be signed by the testator or testatrix, or his or her attorney or attornies for that particular purpose especially authorized and deputed.

Manner of delivery of the will, &c. to testator or testatrix.

And it is further declared and enacted by the authority aforesaid, That whenever any person or persons shall produce to the said clerks, officers or commissioners, or their deputy or deputies, any such label or slip of parchment so indented, stamped and signed as aforesaid, every such will, codicil, testamentary disposition or instructions, or the packet or parcel, to which the same shall have been annexed

annexed or affixed, or shall belong, shall be delivered to the person or persons producing such label or slip of parchment as aforesaid; and the entry thereof made in such book or books as aforesaid, shall be crossed or marked, and the testator or testatrix so receiving back his or her will or codicil, testamentary disposition or instructions, shall sign in the margin of such book or books opposite to the entry thereof, his or her name by way of acknowledging the receipt thereof; and every person to whom such delivery shall be made, One shilling to be paid upon delivery of each will. shall pay unto the said clerks, officers or commissioners, the sum of one shilling.

Provided always, and it is further declared and enacted by the authority aforesaid, That no will, codicil, testamentary disposition, nor instructions so deposited as aforesaid, shall be delivered to any other person or persons, than the testator or testatrix, unless a power of attorney from the testator or testatrix shall be produced, together with such certificated authority as aforesaid properly executed, and authorizing the person or persons producing such certificated authority, label, or slip of parchment so indented, stampd, and signed as aforesaid, to demand the delivery of the will or codicil, or packet or parcel, to which the same had been annexed or affixed, or did belong. Manner of delivering wills to testator's attorney.

Provided always, and it is further declared and enacted by the authority aforesaid, That every such power of attorney, by virtue of which, any will, codicil, testamentary disposition or instructions shall have been left or deposited in such office as aforesaid, shall be deposited, kept and delivered out, together with The powers of attorney to be deposited and delivered out with the wills.

with the will or codicil, packet or parcel, to which the same shall refer or belong.

Proviso for delivery of wills in case the label or slip of parchment be lost, &c.

And it is further declared and enacted by the authority aforesaid, That in case any such label or slip of parchment so indented, stamp, and signed as aforesaid, shall be lost, mislaid, destroyed, or fraudulently obtained or suppressed from the testator or testatrix, or from his or her lawful attorney or attornies, then upon an affidavit having been made before a proper magistrate or magistrates of all the circumstances of the case, as it shall have happened, and such affidavit being produced to the said clerks, officers or commissioners, or their deputy or deputies, they shall, and are hereby required to deliver out the will, codicil, testamentary disposition or instructions, and the cover, packet or parcel, to which such label or slip of parchment so indented, stamp and signed as aforesaid shall have belonged, in the same manner, as if it had been actually produced, and the person or persons receiving the same, by virtue of and under such affidavit, shall sign his, her or their name or names in the margin of the said book or books as aforesaid, opposite to the respective entry so to be crossed or marked as aforesaid, and add thereto the words, *by affidavit*; and the production of such affidavit properly sworn to and signed, shall be, and is hereby declared to be a full and sufficient authority, warrant and indemnity to the clerks, officers or commissioners for delivering in consequence thereof, such will, codicil, packet or parcel as aforesaid, against all persons whomsoever.

Manner of delivering out wills after the death of testator.

Provided always, and it is further declared and enacted by the authority aforesaid, That after the death of any person, who shall have  
so



so deposited his or her will, codicil, testamentary disposition or instructions as aforesaid, no such will, codicil, testamentary disposition nor instructions shall be delivered unto any person or persons bringing such label or slip of parchment so indented, stamped, and signed as aforesaid, until a certificate of the burial of such person so having died, shall have been produced, signed by the minister or priest of the parish or place where he shall have been buried; or in case of accidental death or no burial, until an affidavit of the death sworn before a proper magistrate or magistrates of the place or country, where such person shall have so died without having been buried, shall have been produced; and upon the production of any such certificate or affidavit, the clerks, officers or commissioners, and their deputy or deputies, are hereby required to open such will, codicil, testamentary disposition or instructions as aforesaid, in the presence of the person or persons producing such label or slip of parchment so indented, stamped, and signed as aforesaid, together with such certificate or affidavit; and in case it shall appear, that such person or persons is or are intitled under such will or codicil, either as executor or executrix, or executors or otherwise, to the possession of such will, codicil, testamentary disposition or instructions, in order to prove or inrol the same, then the same shall be delivered to such person or persons accordingly, upon payment of the sum of 2s. 6d. unto the said officers, clerks or commissioners.

Fee of 2s. 6d. to be paid by the person receiving the will.

Provided nevertheless, and it is further declared and enacted by the authority aforesaid, That any person or persons producing such certificate or affidavit of the burial or death of  
any

To whom wills to be delivered, in case of no certificated authority found.

And for what  
fees.

any person to the said clerks, officers or commissioners, although no such label or slip of parchment, indented, stamp and signed as aforesaid shall have been found in the possession of the person so deceased, shall be intitled, upon paying the sum of one shilling to the said clerks, officers or commissioners, to search all the books, in which any such entries have been made as aforesaid; and in case any such will, codicil, testamentary disposition or instructions shall be found to have been there left and deposited by the person so deceased, the same shall immediately be opened and delivered upon payment of the additional sum of 1s. 6d. to the said clerks, officers or commissioners in manner aforesaid.

To whom wills  
to be delivered,  
when no executor.

Provided nevertheless, and it is further declared and enacted by the authority aforesaid, That in case the person or persons so producing such label or slip of parchment, and such certificate or affidavit as aforesaid, shall not appear to be intitled to the possession of such will, codicil, testamentary disposition or instructions, then the clerks, officers or commissioners, shall immediately give notice in writing to the executor or executrix, or executors in such will or codicil named; or in case of none such, to the person or persons who shall appear to be intitled to the greatest beneficial interest under the same, and shall deliver the same to such person or persons so respectively intitled as aforesaid, or to his, her or their attorney or attornies for that purpose to be especially appointed in manner aforesaid, upon payment of two shillings and sixpence to the clerks, officers or commissioners, in order that the same may be forthwith proved or inrolled as the law may require.

Upon Payment  
of 2s. 6d.

Provided

Provided always, and it is further declared and enacted by the authority aforesaid, That whenever after the death of any such testator or testatrix, any such will or codicil, testamentary disposition or instructions, shall be delivered out of such office or repository, the person or persons, to whom the same shall be delivered, shall write his, her or their name or names in the margin of such book, opposite to the entry thereof as aforesaid, with such addition, as intitles him, her or them to the possession of such will, codicil, testamentary disposition or instructions.

Entries to be made in the books of the delivery, and to whom.

Provided nevertheless, and it is further declared and enacted by the authority aforesaid, That all such wills, codicils, testamentary dispositions or instructions, shall, before they are so deposited and entered as aforesaid, be covered with paper or parchment, and sealed by the person or persons depositing the same.

Wills to be sealed up when deposited.

And it is further declared and enacted by the authority aforesaid, That the said clerks, officers or commissioners appointed as aforesaid, and all deputies, whom they may employ in the execution of the said charge, office or commission, shall, before he or they shall respectively act therein, take and subscribe an oath before any one of the Judges of his Majesty's courts of record at Westminster, who are hereby authorized and impowered to administer the same in the form following, that is to say :

The oath to be taken not to open wills, till the act requires it.

“ I A. B. do solemnly swear, that I will  
 “ not open, nor permit nor procure to  
 “ be opened, any packet or parcel, containing, or supposed to contain, any  
 “ will, codicil, testamentary disposition  
 “ or instructions, deposited or to be de-  
 N “ posited

“ posited in the reference office, by vir-  
 “ tue of or under an act of parliament  
 “ made and passed in the twenty-ninth  
 “ year of the reign of his present Majesty,  
 “ intituled, “ *An act for requiring the*  
 “ *inrolment of all deeds, wills and codi-*  
 “ *cils relating to, touching or affecting*  
 “ *any freehold and leasehold lands, te-*  
 “ *nements or hereditaments within the*  
 “ *kingdom of England and dominion of*  
 “ *Wales, and for other purposes therein*  
 “ *mentioned,*” whilst I shall continue to  
 “ act as clerk, officer or commissioner  
 “ thereof, (or as deputy to such clerk,  
 “ officer or commissioner) but only in  
 “ such cases in which the said act directs  
 “ the same to be opened.

“ So help me God.”

Counterfeiting  
the names and  
handwritings  
of the clerks,  
felony.

And it is hereby further declared and enact-  
 ed by the authority aforesaid, That if any person  
 or persons shall forge or counterfeit the name  
 or handwriting of any such officer, commis-  
 sioner or clerk, or his deputy or deputies, or the  
 stamp or seal of the said office, which shall have  
 been made on such label or slip of parchment in  
 manner aforesaid, according to the requisitions  
 of and by virtue of this act, in order to procure  
 the delivery or possession of any such will or  
 codicil, testamentary disposition or instruc-  
 tions so deposited in the said office or repo-  
 sitory as aforesaid, then every such person or  
 persons so offending, being thereof lawfully  
 convicted, shall be adjudged a felon or felons,  
 and shall suffer death as in cases of felony  
 without benefit of clergy.

Obfer-

*Observations upon the Draught of the Bill.*

I Beg leave generally to premise, that as my primary view in this publication, was to supply my readers with sufficient matter, to enable them to form a satisfactory judgment upon the subject; so must I entreat them to consider the draught of the bill as framed purposely for the suggestion of amendments by those, who will take it under their consideration; for *facile est inventis addere*. The leading principles of the bill, and the most material provisions in it, are the immediate consequences of the doctrine, which I have attempted to establish. I cannot therefore be called upon to repeat, what may already appear to some to have been too diffusely treated; though in didactic explanations and arguments upon professional matters, written for nonprofessional readers, I conceive it to be the duty of the writer to omit nothing, which can tend to throw light upon the subject.

Although it be not very usual, I hope it will be thought very proper, in altering and amending a law, to repeal all acts, which affect the law requiring such alteration and amendment. There will then arise a general assurance and security, that nothing can affect the law in question, which does not appear upon the face of that act, which undertakes openly to improve and ascertain it.

It is to be observed, that the bill extends the enrolment to deeds and wills affecting all lands, (except copyhold and customary lands); for as they are always passed or affected with notoriety in the manor court, which generally is attended with



some benefit or advantage to the lord of the manor, it will not be found just nor reasonable to infringe the private rights of individuals by super-inducing a public necessity over the private requisition, from which the benefit arose to the individual. But there cannot be a shadow of pretence, why the inrolment should not affect *leasehold*, as well as *freehold* lands; for there certainly may be more opening to fraudulent and clandestine pre-conveyances and deceit, in the passing, altering and changing of leasehold, than of freehold estates, because at present less notoriety attends the former than the latter.

The payments directed to be made to the persons signing the warrants, *flats*, or directions for inrolment, are regulated according to the present usages; and in the same proportion all the other payments throughout the bill are framed.

The provisions made for securing the proper number of stamps to each deed and will inrolled, is a matter which affects the finance, more than the regulation of the law of the country. There cannot be a doubt, but that the legislature in passing the 20th of his present Majesty meant, that there should be a stamp for each skin of fifteen common law sheets; and it is well known by experience and practice, that several of the most reputable persons of the profession, make it a general practice to insert a greater number of words in the skin under one stamp, than evidently the act of parliament intended should be allowed or permitted. This act, which undertakes to regulate and ascertain the matter, does not positively enact, that such a quantity of words shall be confined to one stamp; but that, if any person having charged his client for ingrossing more, than fifteen common law folios under one stamp, shall be open to an information, and

liable to a penalty of twenty pounds. Now, as most deeds at present are secret conveyances, and not exposed to public inspection, this is a matter, which seldom extends beyond the knowledge and privacy of the solicitor and client; but how impossible is it, that the former should lodge an information to profit of his own inattention to or nonobservance of the law? And how improbable, that the latter should inform against his own solicitor, for having saved him a considerable expence by evading the duty upon stamps? The only secure method of compelling persons to use a proper number of stamps to a given number of words, is by invalidating the deed, if it be not properly stamped: this would give occasion to much altercation and suspicion amongst individuals, if it were made to depend upon their scrutiny and judgment; therefore the clerks of the inrolment office, are made the judges of the fact, and their judgment is rendered liable to very heavy penalties, upon information within a reasonable limitation of time. The vigilance therefore of the clerks will prevent the revenue from being injured, and the actual inrolment of deeds, wills and codicils, will secure individuals from any risk or danger of their becoming invalid, from a want of the proper number of stamps.

As the credibility and responsibility of the officers, clerks or commissioners of the different courts or offices, are objects which ought to be well attended to, and as all popular elections are constantly attended with dissention, dissipation, and many other disadvantages and inconveniencies, I have ventured to suggest a new mode of election, upon this principle, that a person chosen by the majority of the representatives of the country, will be more impartially and quietly elected, than in any other manner:  
for

for it is to be presumed, that party influence, family and pecuniary considerations, or other private views of partiality, will not operate so forcibly upon the members of parliament, as they may be supposed to do upon other individuals, more closely connected with the persons likely to be chosen.

It would be harsh and unjust to deprive the present Yorkshire registers of their appointments; and if reasonable for others, it would be absurd not to have this county adopt the general mode of election in future.

If, however, this mode of election be not relished, there is nothing more easy, than to substitute that in its lieu, which now prevails in the county of York.

As to Middlesex, as the officers and clerks are now in the nomination of the heads of the four courts of records, it would be very unjust and unwarrantable to deprive such respectable characters, as fill these employs, of that patronage, which has usually been annexed to their offices; and as in future more business will certainly come through these offices by the enrolment, than by the registry of deeds and wills, the patronage will be proportionably greater, than it has heretofore been.

As London is the center of most money transactions negotiated in this nation, it is needless to state a reason, why a reference office should be fixed there, rather than in any other place; and the propriety of its existence will fully appear, from the many occasions, which occur in London of searching for the enrolment of deeds and wills enrolled in distant counties; and much delay, doubt, and expence will be avoided, by the order and regularity of such reference books: there is no public office or conservatory, which has not within itself such books of reference; the utility and advantage of which,

which, are fully known and felt by all persons, who have occasion to make searches amongst public archives and records. I shall then say no more upon the subject, than that, if there be county inrolment offices, or courts established, there should also be national books of reference to them, in order, as much as possible, to concenter into one point the whole knowledge, that is intended and required to be conveyed to the public, by recording all deeds and wills affecting lands.

I know many instances, in which wills have been suppressed after the deaths of the testators, by the persons, into whose possession they fell ; but I need not enter into a detail of the very serious consequences, which may thereby happen to the persons interested under such wills. Many cases have happened, and possibly many more may happen, in which wills have been, and may be altered, mislaid and destroyed, wilfully and by accident. And therefore, as I have endeavoured to suggest a plan of general practical utility, respecting deeds and devises, I have considered it as an extension of that plan, to provide a safe conservatory, where all persons exposed to travel, either by sea or land, having no fixt residence, or no secure repository within that residence, or diffiding in those, who either during their lives, or after their deaths, may have access to their private papers, may deposit their wills with safety, where they will be preserved in secrecy, and from whence they will be delivered out to such persons only, who will be intitled to receive them. As there is no establishment of the nature elsewhere in the kingdom, I have from my own ideas, endeavoured to chalk out a plan of such order, regularity, and conveniency in it, as I think will best answer the intended purposes.

Convinced as I am, and long have been, that a general Inrolment Act will be of very essential benefit to the nation, I claim that indulgence from my readers, which a generous public will ever allow to every serious attempt to serve one's country; to do which will ever be the first ambition of my life.

*F I N I S.*





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